

Crawfordsville Clrs.

Site # 2005-06-216

General Correspondence

KENNETH W. MAHER  
ATTORNEY AT LAW

8888 Keystone Crossing  
Suite 1300  
Indianapolis, Indiana 46240

Phone (317) 357-3050  
Fax (317) 357-1066  
E-mail: maherk@iquest.net

April 16, 2007

RECEIVED

APR 18 2007

DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

Nilia Moberly Green  
State Cleanup Section  
Indiana Department of Environmental Management  
100 N. Senate Ave.  
Indianapolis, IN 46204

Re: General Notice of Liability of Tamara Yount and Request for Information  
203 East South Boulevard  
Crawfordsville, Montgomery County  
State Cleanup # 2005-06-216

Dear Ms. Green:

Your letter of March 12, 2007 mentions that information has been submitted in this matter by Crawfordsville Square, LLC and Crawfordsville Square II, LLC. The details of such information were not provided in the letter.

As indicated, Tamara Yount did operate a drycleaners known as Boulevard Cleaners at 203 East South Boulevard in Crawfordsville, Indiana. (As is demonstrated in the separate response to the Request for Information which we have submitted, Tamara Yount never owned the site.) We are also aware that Astbury Environmental Engineering, Inc. has conducted certain investigations at the site and that those investigations indicate contamination at the site.

Although your letter states that the contamination appears to be the result of historic contamination caused during the operation of the Site as a dry cleaner, it does not state at what time during the fifteen or more year history of the drycleaning operations at the site (from approximately 1984 to 1999) the contamination was caused. Moreover, we are unaware of any information which would establish that the contamination was caused during Tamara Yount's operations at the site, which operations constituted only three years out of that fifteen year or more history. Thus, the information available to Tamara Yount (and as far as we know, the information available to the Indiana Department of Environmental Management ("IDEM")), fails to establish that any release of hazardous substances occurred during the operation of the drycleaners by Tamara Yount.

For that reason, we respectfully disagree with the conclusion that Tamara Yount is a Potentially Responsible Person (PRP) under Indiana Code (IC) 13-25-4 and § 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 United States Code (U.S.C. § 9607(a) ("CERCLA")). IC 13-25-4 essentially uses the liability standard set out



in CERCLA § 107(a). (IC 13-25-4-8.) Crawfordsville Square, LLC and Crawfordsville Square II, LLC, as the admitted current owner and operator of the facility, is liable under CERCLA § 107(a)(1), which applies to the current owner and operator at a site. Whether any of the prior operators are liable (and, if so which one or ones) must be determined by CERCLA § 107(a)(2), which provides for liability only of "any person who *at the time of disposal of any hazardous substance* owned or operated any facility at which such hazardous substances were disposed of." (Emphasis added.) Because there was no disposal of hazardous substances during the period of Tamara Yount's operations at the site, she is not a Potentially Responsible Person under CERCLA or IC 13-25-4.

As you may know, Crawfordsville Square, LLC and Crawfordsville Square II, LLC have sued Tamara Yount, the other former operators and their insurers in the Circuit Court of Montgomery County to attempt to obtain funds for the further investigation and remediation of the Site. Notwithstanding the fact that each of the former operators has denied liability, the former operators and their respective insurers have engaged in, and continue to engage in, discussions with Crawfordsville Square, LLC and Crawfordsville Square II, LLC to attempt to reach an agreement regarding the matter.

It appears that Crawfordsville Square, LLC and Crawfordsville Square II, LLC have submitted whatever information they have submitted and made whatever allegations they have made in this matter in an attempt to create some leverage in the on-going discussions. Your letter states that IDEM may take action against all or any one of "the PRPs" (a term that appears to have been erroneously used to include Tamara Yount) or may hold any of the PRPs liable for the cost of the cleanup conducted. It appears that Crawfordsville Square, LLC and Crawfordsville Square II, LLC have encouraged IDEM to make such statements in order to create additional leverage in the on-going discussions among the parties in the litigation.

We submit that the Montgomery Circuit Court is the appropriate forum to determine any allocation of responsibility among the parties to the litigation which is pending in that court. The efforts of Crawfordsville Square, LLC and Crawfordsville Square II, LLC to use IDEM as a tool in settlement negotiations in that matter should be rejected. IDEM should pursue this matter solely against the only clearly liable party, the current owner. The current owner has the means to perform and has already initiated the appropriate action to determine the alleged liability of others. IDEM should decline to inject itself into that dispute.

This would be true in any event, but it is particularly true in view of the fact that neither the current owner nor anyone has come forward with any information which would establish a required element of liability under either CERCLA or the Indiana Code -- that Tamara Yount was the owner or operator of the site *at the time of disposal of hazardous substances*. Because no information has been discovered in the lawsuit which establishes any disposal or release of hazardous substances during the operation of the site by Tamara Yount, we can only assume that the unspecified information submitted in this matter also failed to include any information to establish that required element.

For the foregoing reasons, on behalf of Tamara Yount, I respectfully submit that Tamara Yount should not have been identified as a Potentially Responsible Person (PRP) at this site because she was not the owner or operator at the time of disposal of hazardous substances at the Site. Therefore, we respectfully request that IDEM withdraw and rescind its "General Notice of Liability of Tamara Yount." If IDEM has any information (provided by Crawfordsville Square, LLC or Crawfordsville Square II, LLC or any other person or entity) which it believes establishes liability on the part of Tamara Yount by establishing that she was the operator at the time of disposal of hazardous substances at the site, please provide that information and we will be happy to review it and consider it in our discussions with the plaintiffs.

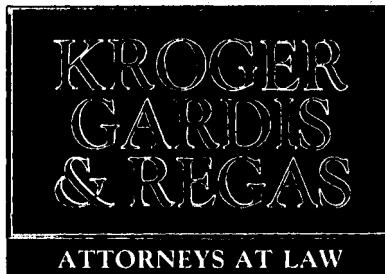
Thank you for your consideration of the foregoing. If you have any questions, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth W. Maher". The signature is fluid and cursive, with the first name "Kenneth" being more prominent and the last name "Maher" following in a similar style.

Kenneth W. Maher

cc: Barb Lollar, IDEM Office of Legal Counsel  
Brent Huber,  
C. Rex Henthorn, Esq.  
Paul S. Kruse, Esq.  
Theodore J. Blanford, Esq.  
Gregory P. Cafouros, Esq.  
Bryce H. Bennett, Jr., Esq.  
Charles W. Browning, Esq.  
Michael D. Almassian, Esq.  
George M. Plews, Esq.  
Donn H. Wray, Esq.



FOUNDED 1937

April 11, 2007

JAMES A. KNAUER  
JOHN J. PETR  
JAMES G. LAUCK  
JAY P. KENNEDY  
BRIAN C. BOSMA  
GREGORY P. CAFOUROS  
MARCIA ROAN  
MADALYN S. KINSEY  
WILLIAM BOCK, III  
MARK J. COLUCCI  
BRETT R. FLEITZ  
TRICIA A. LEMINGER  
REYNOLDS B. BRISSENDEN  
KURTIS A. MARSHALL  
JEFFREY L. LOGSTON  
ANDREW R. FALK  
HARLEY K. MEANS  
STEVEN E. RUNYAN  
Senior Counsel  
SYDNEY L. STEELE  
DAVID E. WRIGHT  
Of Counsel  
GARY A. SCHIFFLI  
Retired  
WILLIAM J. REGAS

R.M. KROGER  
(1912 - 2002)

JOHN E. GARDIS  
(1908 - 2001)

Nilia Moberly Green  
Indiana Department of Environmental Management  
Office of Land Quality, State Cleanup Section  
100 North Senate Avenue, IGCN, Room 1101  
Indianapolis, Indiana 46204-2251

**RE: General Notice of Liability of Rick Bridwell and  
Request for Information  
203 East South Boulevard  
Crawfordsville, Montgomery County  
State Cleanup # 2005-06-216**

Dear Ms Green:

I am writing to you in response to your letter of March 12, 2007, regarding the General Notice of Liability to our client, Rick Bridwell. We previously responded to your request for additional information on the site in our letter to you dated April 11, 2007.

We have also reviewed a copy of Kenneth W. Maher's letter to you regarding the General Notice of Liability to Tamara Yount. We agree with Mr. Maher's analysis of the liability, both of his client and Mr. Bridwell. Mr. Bridwell should not have been identified as a Potentially Responsible Person at this site since there is no evidence that he was an operator at the time of the disposal of hazardous substances at the site.

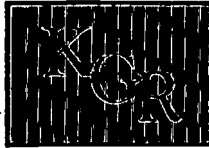
We are also concerned, as was Mr. Maher, that IDEM appears to have been used as a tool by Crawfordsville Square for leverage in the current litigation between the prior owners and operators of this property. Typically, IDEM identifies the current owner or operator of a facility that has had a release and relies on that owner to secure contribution by other responsible parties. That has not happened in this case, and we believe that IDEM is relying on information from a party who is certainly biased in the presentation of that information. In fact, the Montgomery Circuit Court is attempting to address

DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

APR 16 2007

RECEIVED

KROGER, GARDIS & REGAS, LLP  
111 MONUMENT CIRCLE, SUITE 900  
INDIANAPOLIS, INDIANA 46204-5125  
(317) 692-9000 FAX (317) 264-6832 www.kgrlaw.com



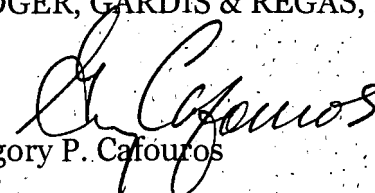
Nilia Moberly Green  
April 11, 2007  
Page Two

these very questions of contribution. IDEM should permit that process to work itself out, and not insert itself into this litigation.

We would respectfully request that IDEM withdraw its General Notice of Liability of Rick Bridwell and to contact me if you have any questions in this regard.

Best regards,

KROGER, GARDIS & REGAS, LLP

  
Gregory P. Cafouros

GPC:pad



FOUNDED 1937

RECEIVED  
APR 12 2007  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

April 11, 2007

JAMES A. KNAUER  
JOHN J. PETR  
JAMES G. LAUCK  
JAY P. KENNEDY  
BRIAN C. BOSMA  
GREGORY P. CAFOUROS  
MARCIA ROAN  
MADALYN S. KINSEY  
WILLIAM BOCK, III  
MARK J. COLUCCI  
BRETT R. FLEITZ  
TRICIA A. LEMINGER  
REYNOLDS B. BRISSENDEN  
KURTIS A. MARSHALL  
JEFFREY L. LOGSTON  
ANDREW R. FALK  
HARLEY K. MEANS  
STEVEN E. RUNYAN  
Senior Counsel  
SYDNEY L. STEELE  
DAVID E. WRIGHT  
Of Counsel  
GARY A. SCHIFFLI  
Retired  
WILLIAM J. REGAS

R.M. KROGER  
(1912 - 2002)  
JOHN E. GARDIS  
(1908 - 2001)

66-30  
Indiana Department of Environmental Management  
Office of Land Quality  
State Cleanup Section – ATTN: Nilia Moberly Green  
100 North Senate Avenue, IGCN, Room 1101  
Indianapolis, Indiana 46204-2251

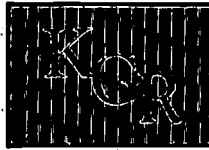
Dear Ms Green:

This letter is in response to your request for information dated March 12, 2007, as supplemented by your letter of March 23, 2007.

Our firm represents Mr. Bridwell and we are responding to your requests on his behalf. As you may know, this matter is in litigation, with a contribution suit brought by the current owners of the property. Mr. Bridwell's knowledge is limited to the two-year period of time he leased the facility. We do know from the documents we have reviewed that the current owners were aware of the presence of dry-cleaning chemicals on the property prior to their purchase of the property and that there is no evidence that a release occurred during Mr. Bridwell's tenancy on the property, or on any prior date. As a consequence, we believe that the current owners are primarily responsible for any remediation that may be required.

The following statements respond to the inquiries you made in your March 12 letter to Mr. Bridwell:

1. There was an above-ground storage tank in the dry cleaning facility at the site.
2. Rick Bridwell is unaware of the capacity of the storage tank, but it held perchloroethylene.



IDEM  
April 11, 2007  
Page Two

3. To the best of Rick Bridwell's knowledge, there were no spills or releases of tetrachloroethene or other hazardous substances at the Site.
4. There were, therefore, no incident report numbers.
5. Similarly, because there were no spills, no actions were taken to clean up any spills.
6. Rick Bridwell leased and operated the Site from May 5, 1994, through August 30, 1996, doing business as Boulevard Cleaners.
7. Used filters were drained back into the dry cleaning machine until dry, then placed in sealed drums provided by Safety Kleen for recovery, which Safety Kleen then picked up for disposal. Rick Bridwell monitored these actions.
8. See Lease, attached.
9. Bridwell was never issued a pretreatment permit or NPDES permit by IDEM, nor was he required to apply for one.

Please let me know whether you require any additional information.

Best regards,

KROGER, GARDIS & REGAS, LLP

  
Gregory P. Cafourios

GPC:pad  
Enclosure  
cc: Rick Bridwell

REAL ESTATE LEASE

THIS AGREEMENT, made and entered into by and between William Ray Chaney (hereinafter called Lessor), and Richard D & Carla L Bridwell (hereinafter called Lessee), WITNESSETH:

LESSOR, in consideration of the rents and covenants herein contained, does hereby lease to LESSEE the following described real estate in the County of Montgomery and State of Indiana, to-wit:

Part of the northwest quarter of section eight (8), township eighteen (18) north, range four (4) west, bounded and described as follows, to-wit: Beginning at a point fifty (50) feet south and twenty and twenty-eight thousandths (20.028) chains east of the northwest corner of said northwest quarter section; township and range aforesaid; thence south one hundred and eighty (180) feet; thence east ninety (90) feet; thence north one hundred eighty (180) feet; thence west ninety (90) feet to the place of beginning.

to have and, to hold unto said Lessee for a term of three years beginning on the 9th day of May, 1994, and ending on the 9th day of May, 1997, and in consideration therefore Lessee does agree to pay rental in the amount of \$28,800.00 payable in installments of \$800.00 per month; the first payment being due and payable on the 1st day of May, 1994, and a like sum on the 1st day of each month thereafter during the term of this lease with the final installment being due on May 1st, 1997, with interest at the rate of 18 % per annum upon each installment after the same becomes due, and with attorney fees in the event of default. All sums due from Lessee hereunder shall be payable without relief from valuation or appraisal laws at Clements-Roscher Corporation, 119 East Main Street, City of Crawfordsville, State of Indiana, or at such other place as Lessor may designate in writing.

LESSEE ACCEPTS PREMISES

Lessee has examined said premises prior to and as a condition precedent to this acceptance and the execution hereof, and is satisfied with the physical condition thereof, and his taking possession thereof shall be conclusive evidence of his receipt thereof in good order and repaid, except as otherwise specified hereon, and agrees and admits that no representation as to the condition or repair thereof has been made by Lessor or his agent which is not expressed or endorsed hereon, and Lessee likewise agrees and admits that no agreement or promise to repair or improve said premises, either before or after the execution hereof, not contained herein, has been made by Lessor or his agent. No holding over by Lessee hereunder shall constitute a renewal or extension of the terms of this lease except upon written consent of Lessor.

LESSEE TO MAINTAIN PREMISES

Lessee shall keep the said premises in a clean, sightly and healthful condition, and in good repair, except as hereinafter provided under "Covenants of Lessor", all at his own expense, and shall yield the same back to Lessor upon termination of the said lease, whether such termination shall occur by expiration of the term hereof or in any other manner whatsoever, in the same condition of cleanliness, repair and sightliness as at the date of the execution hereof, loss by fire or by the elements, and reasonable wear and tear excepted. If, however, the said premises shall not thus be kept in good repair and in a clean, sightly and healthful condition by Lessee, as aforesaid, Lessor may enter the same, himself or by his agents, servants or employees, without such entering causing or constituting a termination of this lease or an interference with the possession of the premises by Lessee, and Lessor may replace the same, in the same condition of repair, sightliness,

healthfulness and cleanliness as existed at the date of execution hereof, and Lessee agrees to pay Lessor, in addition to the rent hereby reserved, the expenses of Lessor in thus replacing the premises in that condition. Lessee shall not permit any waste or misuse of the premises.

#### FURTHER COVENANTS OF LESSEE

Lessee does further covenant and agree that he will pay all bills and charges for water, sewage, gas, electric current, and heating costs, which may be assessed or charged against the occupant of said premises during said term or any extension thereof; that he will not use or occupy said premises for any unlawful purpose; that he will not use or permit the leased premises to be used in violation of any law, order or regulation of any governmental authority relating to the use or occupancy of said premises; that if any use by Lessee of the leased premises increases the insurance rates thereon, Lessee will pay to Lessor the amount of increases in premium caused by such increase in rates; that he will make no alterations or additions in or to said premises without the written consent of said Lessor; that he will permit said Lessor, or his agents, to enter upon said premises at all reasonable times, to examine the condition thereof. Lessee may not assign this lease or sublease the premises without the prior consent of Lessor, and further provide however, that no assignment or subletting shall relieve Lessee of his obligations under this lease.

#### COVENANTS OF LESSOR

Lessor, for himself, and for his heirs and assigns, hereby covenants and agrees with Lessee that said Lessee, paying the rents, and keeping and performing the covenants of this lease on his part to be kept and performed, shall peaceably and quietly hold, occupy and enjoy said premises during said term, without any hindrance or molestation by Lessor or any person or persons lawfully claiming under him, and Lessor shall pay all real estate taxes and assessments levied against the leased premises; Lessor further agrees to keep all exterior portions of the said premises, including foundations, walls and roof, in good repair and order and Lessor shall have access to said premises at any reasonable time to make said repairs; provided, however, that Lessor shall not be liable to Lessee for any damage or injury to Lessee or to his property, or to third persons or to the property of third persons occasioned by the failure of Lessor to keep said premises in repair, all claims for any such damages being hereby expressly waived by Lessee; and provided further, the Lessor covenants and warrants that the leased premises may lawfully be used by Lessee for the purpose for which they are leased.

#### REMEDIES OF LESSOR

If said rent, or any part thereof, shall at any time be in arrears and unpaid, and without any demand being made therefor; or if said Lessee, or his assigns, shall fail to keep and perform any of the covenants, agreements or conditions of this lease, on his part to be kept and performed, and such default is not cured within 30 days after written notice from Lessor setting forth the nature of such default; or if said Lessee shall be adjudged a bankrupt, or shall make an assignment for the benefit of creditors, or if the interest of said Lessee hereunder shall be sold under execution or other legal process, or if Lessee shall file a voluntary petition in bankruptcy, or shall be placed in the hands of a receiver, it shall be lawful for Lessor, his heirs or assigns without notice or process of law, to enter into said premises, and again have, repossess and enjoy the same as if this lease had not been made, and thereupon this lease and everything herein contained on the part of said Lessor to be done and performed shall cease, terminate and be utterly void, all at the election of Lessor; without prejudice, however, to the right of the Lessor to recover from said Lessee, or assigns, all rent due up to the time of such entry. In case of any such default and entry by Lessor, Lessor may relet said premises for the remainder of said term for the highest rent obtainable and may recover from Lessee any deficiency between the amount so obtained, and

the rent hereinabove reserved. Failure on the part of Lessor to avail himself of any right or remedy hereunder shall not constitute a waiver thereof as to any future default or breach by Lessee, his heirs and assigns.

#### RISK OF LOSS

In case any building on said premises, or any substantial part of said premises, without any fault or neglect of either party, shall be destroyed or so injured by the elements, or other cause, as to be unfit for occupancy, then this lease may be cancelled or terminated by either party at their election. Lessor shall not be obligated to carry fire and windstorm insurance on the building, but Lessee shall be solely responsible for insuring his personal property stored on the premises, and for obtaining business interruption insurance, if desired. Lessee agrees at all times to carry comprehensive general liability insurance, listing Lessor as additional insured and providing certificate of insurance with limits of not less than \$500,000 for bodily injury and \$500,000 property damage.

#### LESSOR MAY MORTGAGE PREMISES

The Lessor may at any time mortgage the demised premises, or any part thereof, and this lease shall be subordinate to the lien of any such mortgage; and Lessee agrees to execute any documents which may be required by any lending institution for the purpose of such a subordination.

#### FIRST OPTION TO RENEW

Lessee shall have a first option to renew this lease for up to three successive one-year terms following expiration of the initial three-year term. Lessee may exercise his option by delivering written notice of intention to renew to Clements-Roscher Corporation, as agent of Lessor, not less than 60 days prior to the expiration of the initial three-year term or any one-year renewal term. Upon receipt of such written notice, Lessor shall propose in writing a new rental amount to Lessee for the renewal term. Lessee shall have fourteen days from the receipt of such written rent proposal within which to accept or reject it in writing. If Lessee accepts such rent proposal, this lease shall be renewed for a one-year term upon the same terms and conditions as are set forth herein, except that the amount of rent shall be that set forth in Lessor's proposal. If Lessee does not timely give written notice of intention to exercise his option, or if he rejects or fails to timely accept Lessor's rent proposal, then in any of such events, this lease shall terminate upon the expiration of the then-current term, without the necessity of any further notice of any kind. In no event, however, shall Lessee be entitled to more than three one-year renewals, nor shall Lessor be obligated to renew the lease if Lessee is in breach of his obligations hereunder at the expiration of any term.

#### FIRST REFUSAL OPTION TO PURCHASE

Lessor agrees that he will not sell the leased premises, or any part thereof, without first offering the same to Lessee upon the same terms and conditions as may be offered to or by any third party. Lessee shall have fourteen days from receipt of written notice of such an offer within which to accept or reject it in writing. If Lessee rejects or fails to timely accept such offer, Lessor may sell the leased premises, or any part, to such third party upon such terms, subject only to Lessee's leasehold rights under this lease. Lessee acknowledges that Lessor owns additional real estate adjoining the leased premises on the east, and agrees that if Lessor offers to sell or receives an offer to purchase the leased premises, or part thereof, together with all or part of the adjoining real estate, Lessee's first refusal option may be exercised only as to the entire parcel which Lessor has offered for sale or upon which he has received an offer to purchase.

NOTICES

Any notice to be given under this lease shall be made in person or by certified mail to Lessor at Clements-Roscher Corporation, 119 East Main, Crawfordsville, Indiana, and to Lessee at 203 S Blvd Crawfordsville, Indiana, or to such other address as may be given by either party in writing, in person or by certified mail. Notice, if made by certified mail, shall be deemed given on the date of postmark.

This lease, and the covenants herein contained, shall extend to and be binding upon the heirs, executors and assigns of the parties to this lease. Whenever necessary to a proper construction to this agreement, the singular shall be deemed to include the plural, and the masculine shall be deemed to include the feminine or neuter, and vice versa. If this instrument is executed in duplicate counterparts, each shall be deemed an original.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 9th day of May, 1994.

Richard D Bridwell (SEAL)  
Lessee  
Richard D Bridwell

William Ray Chaney (SEAL)  
William Ray Chaney  
Lessor

Carla L Bridwell (SEAL)  
Lessee  
Carla L Bridwell

STATE OF INDIANA )  
COUNTY OF MONTGOMERY ) SS:

9th Before me a Notary Public in and for said County and State, on this day of May, 1994, personally appeared William Ray Chaney, Lessor and acknowledged the execution of the above and foregoing Lease to be his voluntary act and deed.

WITNESS my hand and Notarial Seal.

John G. Collins  
Notary Public  
Residing in Montgomery County, IN

My Commission Expires:

11/17/97

STATE OF INDIANA )  
COUNTY OF MONTGOMERY ) SS:

Before me a Notary Public in and for said County and State, on this 9th day of May, 1994, personally appeared Richard D Bridwell and Carla L Bridwell, Lessee and acknowledged the execution of the above and foregoing Lease to be his voluntary act and deed.

WITNESS my hand and Notarial Seal.

John G. Collins  
Notary Public  
Residing in Montgomery County, IN

My Commission Expires:

11/17/97

MAY 16 1994

## BILL OF SALE

**This Indenture Witnesseth, That** Linneaus J. Wheeler and Eulah June Wheeler,  
Husband and Wife, and Mary Shaver by Tom Shaver  
as POA

in consideration of Sixty Thousand Dollars

Dollars (\$ 60,000.00 ), the receipt whereof is hereby

acknowledged, does hereby grant, sell, transfer and deliver unto Richard G. Bridwell and  
Carla L. Bridwell, Husband and Wife

the following goods and chattels, namely:

1-drycleaning machine	1-recliner
1-air vacuum	1-spotting board & tank
1-water softener	1-boiler & return system
1-pants topper	1-pants legger
2-utility presses	2-sets puff irons
1-steam former	1-perfect pleat drapery machine
counters	1-cash register
1-desk & chair	light fixtures
1-electronic door announcer	4-large laundry carts
1-automatic washer	1-gas furnace
1-air compressor	1-refrigerator
1-calculator	1-clock
2-telephones	mileage booster filters
fans	1-bagging machine
all chemicals	all supplies
all finished clothes	

The Sellers, Linneaus J. Wheeler and Eulah June Wheeler agree to continue to work at the Boulevard Dry Cleaners for a salary of \$200.00 each from the date of this sale until June 1, 1994, and further, they agree to work thereafter from June 1, 1994 through June 30, 1994 at no salary.

to have and to hold all and singular the goods and chattels to said transferee and his personal representatives, assigns or successors, to their own use and benefit forever. And transferor hereby covenants with the transferee that the transferor is the lawful owner of said goods and chattels; that they are free from all encumbrances; that transferor has good right to sell the same as aforesaid; and transferor will warrant and defend the same against the lawful claims and demands of all persons.

STATE OF INDIANA, MONTGOMERY COUNTY, SS:

Before me, the undersigned, a Notary Public, in and  
for said County and State, this 5 day of  
May, 19 94, personally  
appeared:

and acknowledged the execution of the foregoing  
Bill of Sale. In Witness Whereof, I have hereunto  
subscribed my name and affixed my official seal.

My Commission Expires: NOV 29 1995

Mailep J. Leshley  
NOTARY PUBLIC  
Resident of Putnam County

Dated this 5 day of May, 19 94

Linneaus J. Wheeler (SEAL)  
Linneaus J. Wheeler

\_\_\_\_ (SEAL)

Eulah June Wheeler (SEAL)  
Eulah June Wheeler

Mary L. Shaver by Tom Shaver POA (SEAL)  
Mary Shaver by Tom Shaver as POA

\_\_\_\_ (SEAL)

This instrument was prepared by Richard G. Tulley, Attorney at Law

KENNETH W. MAHER  
ATTORNEY AT LAW

8888 Keystone Crossing  
Suite 1300  
Indianapolis, Indiana 46240

Phone (317) 357-3050  
Fax (317) 357-1066  
E-mail maherk@iquest.net

April 11, 2007

66-30  
Indiana Department of Environmental Management  
Office of Land Quality  
State Cleanup Section, Attn: Nilia Moberly Green  
100 N. Senate Ave., IGCN, Room 1101  
Indianapolis, IN 46204-2251

RECEIVED  
APR 12 2007  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

Re: General Notice of Liability of Tamara Yount and Request for Information  
203 East South Boulevard  
Crawfordsville, Montgomery County  
State Cleanup # 2005-06-216

Dear Ms. Green:

This letter is in response to the Request for Information contained in your letter of March 12, 2007. As indicated in your letter, I represent Tamara Yount with respect to this matter.

This response to the Request for Information is not an admission that Tamara Yount has any actual or potential liability with regard to the above referenced matter; nor is it an admission of any fact or allegation of the letter. Tamara Yount specifically denies that she was the owner or operator of the site at the time of any release of any hazardous substances at the site or that she caused or contributed to any contamination at the site. Moreover, we note that we have not been provided the "information submitted by Crawfordsville Square, LLC and Crawfordsville Square II, LLC" or a sufficient description of that information and thus, we could not possibly admit anything with regard to such information. Finally, we do not admit that the Indiana Department of Environmental Management has the authority, under the facts of this matter, to issue the information request to Tamara Yount.

Notwithstanding the concerns expressed above and in the spirit of cooperation, on behalf of Tamara Yount, I respond to the requests, as follows:

1. The location of any above or underground tanks and associated piping;

Response: Tamara Yount has been informed that there were underground tanks which she believes were used to store petroleum long prior to the time when she leased the site. She never owned or operated such tanks or any piping associated with those tanks. She does not know the precise location of those tanks. There were no underground tanks used as a part of the dry cleaning operations at the site while Tamara Yount operated the business there.



Tamara Yount knows that there was a tank under the machine (but above ground), but she does not presently have any information as to the piping between the tank and the dry cleaning machine. The tank and machine would be the same as installed by the previous operator, Rick Bridwell.

2. The capacity and contents of any tanks;

Response: Tamara Yount does not know the capacity of the underground petroleum tanks which were never owned or used by her. She also does not know the capacity of the above ground tank which held the tetrachloroethene (PERC) used in the dry-to-dry cleaning machine.

3. The dates of any spills or releases of tetrachloroethene (PERC) or other hazardous substances used at the site;

Response: Tamara Yount knows of no spills or releases of tetrachloroethene (PERC) or other hazardous substances during her operations at the site and therefore denies that there were any such spills or releases.

4. Any incident report numbers;

Response: There were no reportable incidents during Tamara Yount's operations at the site. Tamara Yount denies any connection with the Incident Number 2005-06-216 that was assigned to the report made by Astbury Environmental Engineering Inc. in 2005.

5. A description of any actions taken to clean up any spills or releases of PERC;

Response: This request is not applicable because there were no spills or releases of PERC at the site during Tamara Yount's operations at the site.

6. Identify the period of time during which your client owned or operated (or leased) the Site;

Response: Tamara Yount never owned the Site. She leased the Site from William Ray Chaney and Ruth S. Chaney pursuant to the lease which is attached hereto in response to Request No. 8 below. The attached lease provided that the term of said lease began September 9, 1996. Although the term of said lease ended on September 9, 1999, Tamara Yount actually ceased operations on the property on or before August 30, 1999.

7. Explain how your client disposed of any used PERC at the Site, providing the names of any entities that transported or received the PERC for ultimate disposal;

Response: All disposal of PERC or PERC contaminated filters was handled by

Safety-Kleen, which picked up and transported such materials for disposal.

8. Provide copies of any leases concerning the Site;

Response: A copy of the lease is attached.

9. Identify whether your client had a pretreatment permit with a municipal entity or an NPDES permit with IDEM.

Response: Tamara Yount did not have a pretreatment permit or an NPDES permit because her operations did not require such permits.

The letter also asked for information about other parties who may have information which will assist IDEM in its investigation of the Site or who may be responsible for the contamination at the Site. Other than Crawfordsville Square, LLC and Crawfordsville Square II, LLC which have liability as the current owner of the site and one or more of the earlier operators of Boulevard Cleaners who may be potentially liable, we do not know of any other such parties at this time.

The above information responds to the requests for information contained in the above referenced General Notice of Liability of Tamara Yount and Request for Information. A separate letter, addressed to Nilia Moberly Green, will be provided to respond to the "General Notice" portion of the letter and to discuss the actions which IDEM may contemplate for this Site.

If there are any further questions regarding this matter, please contact the undersigned.

Very truly yours,



Kenneth W. Maher

cc: Barb Lollar, IDEM Office of Legal Counsel  
Brent Huber,  
C. Rex Henthorn, Esq.  
Paul S. Kruse, Esq.  
Theodore J. Blanford, Esq.  
Gregory P. Cafouros, Esq.  
Bryce H. Bennett, Jr., Esq.  
Charles W. Browning, Esq.  
Michael D. Almassian, Esq.  
George M. Plews, Esq.  
Donn H. Wray, Esq.

## REAL ESTATE LEASE

THIS AGREEMENT, made and entered into by and between William Ray Chaney and Ruth S. Chaney (hereinafter called Lessor(s)), and John C. Will and Tamara L. Will, husband and wife, (hereinafter called Lessee(s)), WITNESSETH:

### 1. LEASED PREMISES

LESSOR, in consideration of the rents and covenants herein contained, does hereby lease to LESSEE the real estate, with improvements thereon, which is known as 203 South Boulevard, Crawfordsville, Indiana, which is more particularly described as follows:

Part of the northwest quarter of section eight (8), township eighteen (18) north, range four (4) west, bounded and described as follows, to-wit: Beginning at a point fifty (50) feet south and twenty and twenty-eight thousandths (20.028) chains east of the northwest corner of said northwest quarter section; township and range aforesaid; thence south one hundred and eighty (180) feet; thence east ninety (90) feet; thence north one hundred eighty (180) feet; thence west ninety (90) feet to the place of beginning.  
All in Montgomery County, Indiana.

### 2. RENT AND TERM

The Lessor hereby leases this real estate for a term of three (3) years beginning on the 9th day of September, 1996, and ending on the 9th day of September, 1999, and in consideration therefore Lessee does agree to pay rental in the amount of \$28,800.00 payable in installments of \$800.00 per month, the first payment being due and payable on the 1st day of September, 1996, and a like sum on the 1st day of each month thereafter during the term of this lease with the final installment being due on August 1, 1999, with interest at the rate of 18% per annum upon each installment after the same becomes due, and with attorney fees in the event of default. All sums due from Lessee hereunder shall be payable without relief from valuation or appraisal laws at such places as Lessor may designate in writing.

### 3. LESSEE ACCEPTS PREMISES

Lessee has examined said premises prior to and as a condition precedent to this acceptance and the execution hereof, and is satisfied with the physical condition thereof, and his taking possession thereof shall be conclusive evidence of his receipt thereof in good order and repair, except as otherwise specified hereon, and agrees and admits that no representation as to the condition or repair thereof has been made by Lessor or his agent which is not expressed or endorsed hereon, and Lessee likewise agrees and admits that no agreement or promise to repair or improve said premises, either before or after the execution hereof, not contained herein, has been made by Lessor or his agent. No holding over by Lessee hereunder shall constitute a renewal or extension of the terms of this lease except upon written consent of Lessor.

### 4. LESSEE TO MAINTAIN PREMISES

Lessee shall keep the said premises in a clean, sightly and healthful condition, and in good repair, except as hereinafter provided under "Covenants of Lessor", all at his own expense, and shall yield the same back to Lessor upon termination of the said lease, whether such termination shall occur by expiration of the term hereof or in any other manner whatsoever, in the same condition of cleanliness, repair and sightliness as at the date of the

execution hereof, loss by fire or by the elements, and reasonable wear and tear excepted. If, however, the said premises shall not thus be kept in good repair and in a clean, sightly and healthful condition by Lessee, as aforesaid, Lessor may enter the same, himself or by his agents, servants or employees, without such entering causing or constituting a termination of this lease or an interference with the possession of the premises by Lessee, and Lessor may replace the same, in the same condition of repair, sightliness, healthfulness and cleanliness as existed at the date of execution hereof, and Lessee agrees to pay Lessor, in addition to the rent hereby reserved, the expenses of Lessor in thus replacing the premises in that condition. Lessee shall not permit any waste or misuse of the premises.

#### 5. FURTHER COVENANTS OF LESSEE

Lessee does further covenant and agree that he will pay all bills and charges for water, sewage, gas, electric current, and heating costs, which may be assessed or charged against the occupant of said premises during said term or any extension thereof; that he will not use or occupy said premises for any unlawful purpose; that he will not use or permit the leased premises to be used in violation of any law, order or regulation of any governmental authority relating to the use or occupancy of said premises; that if any use by Lessee of the leased premises increases the insurance rates thereon, Lessee will pay to Lessor the amount of increases in premium caused by such increase in rates; that he will make no alterations or additions in or to said premises without the written consent of said Lessor; that he will permit said Lessor, or his agents, to enter upon said premises at all reasonable times, to examine the condition thereof. Lessee may not assign this lease or sublease the premises without the prior consent of Lessor, and further provide however, that no assignment or subletting shall relieve Lessee of his obligations under this lease.

#### 6. COVENANTS OF LESSOR

Lessor, for himself, and for his heirs and assigns, hereby covenants and agrees with Lessee that said Lessee, paying the rents, and keeping and performing the covenants of this lease on his part to be kept and performed, shall peaceably and quietly hold, occupy and enjoy said premises during said term, without any hindrance or molestation by Lessor or any person or persons lawfully claiming under him, and Lessor shall pay all taxes and assessments levied against the leased premises; Lessor further agrees to keep all exterior portions of the said premises, including foundations, walls and roof, in good repair and order and Lessor shall have access to said premises at any reasonable time to make said repairs; provided, however, that Lessor shall not be liable to Lessee for any damage or injury to Lessee or to his property, or to third persons or to the property of third persons occasioned by the failure of Lessor to keep said premises in repair, all claims for any such damages being hereby expressly waived by Lessee; and provided further, the Lessor covenants and warrants that the leased premises may lawfully be used by Lessee for the purpose for which they are leased.

#### 7. REMEDIES OF LESSOR

If said rent, or any part thereof, shall at any time be in arrears and unpaid, and without any demand being made therefor; or if said Lessee, or his assigns, shall fail to keep and perform any of the covenants, agreements or conditions of this lease, on his part to be kept and performed, and such default is not cured within 30 days after written notice from Lessor setting forth the nature of such default; or if said Lessee shall be adjudged a bankrupt, or shall make an assignment for the benefit of creditors, or if the interest of said Lessee hereunder shall be sold under execution or other legal process, or if Lessee shall file a voluntary petition

in bankruptcy, or shall be placed in the hands of a receiver, it shall be lawful for Lessor, his heirs or assigns without notice or process of law, to enter into said premises, and again have, repossess and enjoy the same as if this lease had not been made, and thereupon this lease and everything herein contained on the part of said Lessor to be done and performed shall cease, terminate and be utterly void, all at the election of Lessor; without prejudice, however, to the right of the Lessor to recover from said Lessee, or assigns, all rent due up to the time of such entry. In case of any such default and entry by Lessor, Lessor may relet said premises for the remainder of said term for the highest rent obtainable and may recover from Lessee any deficiency between the amount so obtained, and the rent hereinabove reserved. Failure on the part of Lessor to avail himself of any right or remedy hereunder shall not constitute a waiver thereof as to any future default or breach by Lessee, his heirs and assigns.

#### 8. REMEDIES OF LESSEE

In the event of any breach of this lease, or any covenant thereof, by the Lessor, the Lessee shall have all of the rights and remedies provided for by Indiana law. In addition, the Lessee shall have the right to collect from the Lessor any and all attorneys fees, court costs and other costs of litigation which the Lessee incurs as a result of such breach.

#### 9. RISK OF LOSS

In case any building on said premises, or any substantial part of said premises, without any fault or neglect of either party, shall be destroyed or so injured by the elements, or other cause, as to be unfit for occupancy, then this lease may be cancelled or terminated by either party at their election. Lessor shall not be obligated to carry fire and windstorm insurance on the building, but Lessee shall be solely responsible for insuring his personal property stored on the premises, and for obtaining business interruption insurance, if desired. Lessee agrees at all times to carry comprehensive general liability insurance, listing Lessor as additional insured and providing certificate of insurance with limits of not less than \$500,000 for bodily injury and \$500,000 property damage.

#### 10. LESSOR MAY MORTGAGE PREMISES

The Lessor may at any time mortgage the demised premises, or any part thereof, and this lease shall be subordinate to the lien of any such mortgage; and Lessee agrees to execute any documents which may be required by any lending institution for the purpose of such a subordination.

#### 11. FIRST OPTION TO RENEW

Lessee shall have a first option to renew this lease for up to three successive one-year terms following expiration of the initial three-year term. Lessee may exercise his option by delivering written notice of intention to renew to the Lessor, not less than 60 days prior to the expiration of the initial three-year term or any one-year renewal term. Upon receipt of such written notice, Lessor shall propose in writing a new rental amount to Lessee for the renewal term. Lessee shall have fourteen days from the receipt of such written rent proposal within which to accept or reject it in writing. If Lessee accepts such rent proposal, this lease shall be renewed for a one-year term upon the same terms and conditions as are set forth herein, except that the amount of rent shall be that set forth in Lessor's proposal. If Lessee does not timely give written notice of intention to exercise his option, or if he rejects or fails to timely accept Lessor's rent proposal, then in any of such events, this lease shall terminate upon the

expiration of the then-current term, without the necessity of any further notice of any kind. In no event, however, shall Lessee be entitled to more than three one-year renewals, nor shall Lessor be obligated to renew the lease if Lessee is in breach of his obligations hereunder at the expiration of any term.

## 12. FIRST REFUSAL OPTION TO PURCHASE

Lessor agrees that he will not sell the leased premises, or any part thereof, without first offering the same to Lessee upon the same terms and conditions as may be offered to or by any third party. Lessee shall have fourteen days from receipt of written notice of such an offer within which to accept or reject it in writing. If Lessee rejects or fails to timely accept such offer, Lessor may sell the leased premises, or any part, to such third party upon such terms, subject only to Lessee's leasehold rights under this lease. Lessee acknowledges that Lessor owns additional real estate adjoining the leased premises on the east, and agrees that if Lessor offers to sell or receives an offer to purchase the leased premises, or part thereof, together with all or part of the adjoining real estate, Lessee's first refusal option may be exercised only as to the entire parcel which Lessor has offered for sale or upon which he has received an offer to purchase.

## 13. NOTICES

Any notice to be given under this lease shall be made in person or by certified mail to Lessor at 38540 Camden Avenue, Zephyrhills, Florida 33540, and to Lessee at 203 South Boulevard, Crawfordsville, Indiana, or to such other address as may be given by either party in writing, in person or by certified mail. Notice, if made by certified mail, shall be deemed given on the date of postmark.

This lease, and the covenants herein contained, shall extend to and be binding upon the heirs, executors and assigns of the parties to this lease. Whenever necessary to a proper construction to this agreement, the singular shall be deemed to include the plural, and the masculine shall be deemed to include the feminine or neuter, and vice versa. If this instrument is executed in duplicate counterparts, each shall be deemed an original.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 30 day of August, 1996.

LESSEES:

John C. Will (SEAL)  
John C. Will

Tamara L. Will (SEAL)  
Tamara L. Will

LESSOR:

William Ray Chaney (SEAL)  
William Ray Chaney

Ruth S. Chaney (SEAL)  
Ruth S. Chaney

C. Rex Henthorn  
J. Lamont Harris  
Stuart K. Weliever  
Amy S. Carlson

  
**HH&W**  
Henthorn, Harris & Weliever, P.C.  
Attorneys at Law

Chase Harding (1899-1956)  
Robert B. Harding (1933-1977)  
Carl F. Henthorn, Retired

April 9, 2007

66-30  
Indiana Department of Environmental Management  
Office of Land Quality  
State Cleanup Section, Attn: Nilia Moberly Green  
100 N Senate Ave  
Indianapolis IN 46206-6015

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dear Ms. Green:

Enclosed you will find three (3) copies of the response of Linneaus Wheeler to your letter dated March 12, 2007, as requested.

If you have any questions, please advise.

Yours truly,

HENTHORN, HARRIS & WELIEVER

  
C. Rex Henthorn

cc: Linneaus Wheeler  
CRH:ch

**RECEIVED**  
APR 12 2007  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

**LINNEAUS WHEELER**  
**900 South Washington St., Apt 32**  
**Crawfordsville IN 47933**

April 9, 2007

**RECEIVED**  
**APR 12 2007**  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

66-30  
Indiana Department of Environmental Management  
Office of Land Quality  
State Cleanup Section, Attn: Nilia Moberly Green  
100 N Senate Avenue  
Indianapolis IN 46206-6015

Re: 203 East Boulevard  
Crawfordsville, Montgomery Couty  
#2005-06-216

Dear Ms. Green:

In response to your letter dated March 12, 2007, I submit the following:

1. I had no information regarding the existence of any underground tanks and associated piping in place during my operation of the premises;
2. See #1 above. No tank, as such, existed. All PERC was contained within a standard Martinizing dry cleaning machine which never leaked during my operation of the premises.
3. See #2 above. I believe no spills or releases occurred during my operation of the dry cleaner and I have no knowledge of any spills or releases of PERC or other hazardous substances during my operation of the premises;
4. See #3 above.
5. See #3 above.
6. I was a former operator of the Boulevard Cleaners during a period beginning October 1, 1991, and ending May 4, 1994, although I occupied the premises only through an installment contract purchasing the business and its assets from Mary Shaver who were, at the time leasing from the owners, William Chaney and his wife;
7. I utilized the services of Safety Kleen. No PERC ever left the premises unless any residual remained within the machine's filters which were always placed directly

in and encased by steel drums for pickup by Safety Kleen.

8. I did not have a written lease with the landowner Chaney.
9. I did not have a pretreatment permit with a municipal entity or a NPDES permit with IDEM.

A review of the persons and/or entities copied by your March 12, 2007, letter, I have no information regarding parties that have information regarding this site that is not already shown receiving your correspondence.

Yours truly,

  
Linneaus Wheeler

cc: Henthorn, Harris & Weliever

Donn H. Wray

Attorney at Law

Also admitted to practice in the State of Illinois

Telephone: 317-639-5454

Fax: 317-632-1319

E-mail: [dwwray@silegal.com](mailto:dwwray@silegal.com)

March 23, 2007

Nilia Moberly Green, Project Manager  
State Cleanup Section  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204

RECEIVED  
MAR 27 2007  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

RE: State Cleanup #2005-06-216  
Your letter of 3/12/07 to "Chaney Estates"

Dear Ms. Green:

I am defense counsel provided to the "Chaney Estates" at the expense of Hoosier Insurance Company, a liability insurance carrier. I am responding to your letter of March 12, 2007 sent to Brent Huber of the Ice Miller firm. I believe that this letter was ostensibly sent to Mr. Huber in his capacity as counsel to the Special Representative of the Chaney Estates, Peter Cleveland. My understanding is that you have sent a number of similar notice letters to numerous attorneys involved in litigation initiated on behalf of the Crawfordsville Square Entities. The Crawfordsville Square Entities have had involvement with the property since an agreement to purchase the property from Ruth Chaney was negotiated in 1998. I also have reason to believe that you selected the recipients of your letter based upon information provided to you by Brent Huber, who also represents the Crawfordsville Square Entities as plaintiffs and initiated this litigation as their attorney.

The propriety of the representation of the "Estates" by Mr. Huber and Mr. Cleveland is a serious question which has been raised before the Montgomery Superior Court, Probate Division and the Montgomery Circuit Court. In addition, the propriety of the "Estates" existence is problematic due to the narrow and specific requirements of the sole statute under which they were ostensibly opened (I.C. 29-1-14-1(f)) not having been met. I enclose for your information and file copies of the following pleadings, motions, and memoranda filed in those proceedings which detail the above-referenced issues:

Probate Court Filings:

1. 12/20/06 "Petition to Remove Special Representative and His Counsel and Appoint Successor Special Representative" (example from Ruth Chaney Estate, similar filing made in William Chaney Estate).

2. 2/12/07 "Response to Special Representative's 'Notice of Filing' and Motion to Close Estates in Light of Admissions Made"

Circuit Court Filings:

1. 1/9/07 "Motion of Defendants, The 'Estates of Ruth S. and William R. Chaney' For Summary Judgment Pursuant to T.R. 56"
2. 1/9/07 "Brief in Support of Motion of Defendants, The 'Estates of Ruth S. and William R. Chaney' for Summary Judgment Pursuant to T.R. 56"
3. 2/7/07 "Motion to Realign the Parties"
4. 2/16/07 "Notice of Filing in Probate Court Proceedings, Response to 'Motion to Realign the Parties' and Motion to Dismiss Chaney Estates in Light of Admissions Made"
5. 2/22/07 "Response in Opposition to 'Motion to Strike and Motion to Disqualify Stewart & Irwin, P.C.'"
6. 3/19/07 "Supplementation and Correction to 'Response in Opposition to Motion to Strike and Motion to Disqualify Stewart & Irwin, P.C.'"

If there could be any liability on the part of the "Chaney Estates" given these circumstances (which is being disputed), the real parties in interest would be the alleged liability insurance carriers, as no assets of the "Estates" remain or may be subject to liability arising from a late claim presented under I.C. 29-1-14-1(f). Consequently, any agreement involving IDEM and the putative "Estates" must necessarily involve defense counsel provided to the "Estates" by such liability carriers. As to the "Chaney Estates" issues, any agreement concluded by IDEM solely with Messrs. Huber and Cleveland would, in our view, not be binding and enforceable. All of these issues are the subject of the pending litigation.

Mr. and Mrs. Chaney have both been dead for several years — Mr. Chaney died October 27, 1996 and Mrs. Chaney died March 20, 2001. The time for claiming against the Chaney's through their estates is long since passed. The allegedly applicable Indiana Statute, I.C. 29-1-14-1(f), allows only tort claims arising out of negligence to be brought after the probate claims bar date, if brought during the statute of limitations for the tort. Such claims may proceed only against insurance coverage available to the estates. However, as you know, the claims advanced in your letter arising under I.C. 35-25-4 and § 107(a) of CERCLA are strict liability claims that do not require the showing of "negligence," "fault," or even the existence of a legal "wrong." Negligence is not an element of such claims. Thus the claims, that IDEM may otherwise have had against the Chaney's while alive or their estates if timely filed, are barred.

Nilia Moberly Green, Project Manager  
State Cleanup Section  
Indiana Department of Environmental Management  
March 23, 2007  
Page 3

stewart & irwin<sup>®</sup> pc

With respect to the information sought in your letter, I do not have available to me any documents pertaining to the history of the site that have not been produced or otherwise made available through the litigation pending in Montgomery County.

Should you have any question or comment regarding this matter, do not hesitate to contact me.

Very truly yours,

STEWART & IRWIN, P.C.

  
Donn H. Wray

DHW/jlw  
Enclosures

cc: Brent Huber/Tonya Bond (w/out encl.)  
C. Rex Henthorn (w/out encl.)  
Paul S. Kruse (w/out encl.)  
Gregory Cafourous/Andrew R. Falk (w/out encl.)  
Kenneth W. Maher (w/out encl.)  
Bryce H. Bennett, Jr./Jeffrey B. Fecht (w/out encl.)  
Charles W. Browning/Patrick Winters (w/out encl.)  
Michael D. Almassian (w/out encl.)  
George M. Plews (w/out encl.)  
Theodore J. Blanford (w/out encl.)  
Barb Lollar, IDEM OLC (w/encl.)

SI-127976\_1

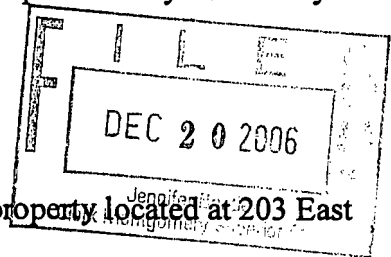
STATE OF INDIANA ) IN THE MONTGOMERY CIRCUIT COURT  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54D01-0609-ES-0075

IN RE: THE ESTATE OF )  
RUTH S. CHANEY )

**PETITION TO REMOVE SPECIAL REPRESENTATIVE AND HIS COUNSEL AND  
APPOINT SUCCESSOR SPECIAL REPRESENTATIVE**

Petitioner, the Estate of Ruth S. Chaney, by defense counsel provided by its liability insurance carrier, Hoosier Insurance Company, states as follows:

1. That Ruth S. Chaney died on March 20, 2001.
2. That during her lifetime, Mrs. Chaney owned real property located at 203 East South Boulevard, Crawfordsville, IN (the "Site") with her husband, William R. Chaney, and that the Site was leased from time-to-time by the Chaney's to various tenants who used the Site as a dry cleaning business.
3. That upon the death of Mr. Chaney, Mrs. Chaney became the sole owner of the Site.
4. That following the death of Mr. Chaney, the Site was sold by Mrs. Chaney to Crawfordsville Square LLC. and/or Crawfordsville Square II LLC (collectively "Crawfordsville Square").
5. That environmental contamination has allegedly been found on the Site.
6. That a cause of action is pending in this Court, captioned Crawfordsville Square LLC, et al., v. Hoosier Insurance Company, et al., Cause No. 54C01-0508-PL-00331 (the "Pending Action"), that was brought against the owners and operators of the dry cleaning business, the past owners of the Site (including Mr. and Mrs. Chaney purportedly through their



respective estates), and all of the insurers of the owners and operators in order to obtain funding to remediate the environmental contamination of the Site.

7. That in the Pending Action, Crawfordsville Square has alleged that the Estate of Ruth S. Chaney is liable to Crawfordsville Square under various statutes and common law rules.

8. That in the Pending Action, Crawfordsville Square has alleged that Hoosier Insurance Company insured Mr. and Mrs. Chaney with respect to their ownership of the Site.

9. That pursuant to the terms of its policy issued to the Chaney's, Hoosier Insurance Company has the right to appoint defense counsel.

10. That an estate was opened for the decedent, Ruth S. Chaney, on or about the 2<sup>nd</sup> day of October, 2006 and that Letters of Administration were issued to Peter Cleveland as Special Representative.

11. That Peter Cleveland is a principal and general counsel of Crawfordsville Square, the plaintiff in the Pending Action.

12. That Peter Cleveland, as the Special Representative of the decedent's estate, is a defendant in the Pending Action and has a duty to zealously guard the interests of the Estate as a defendant in the Pending Action.

13. That Peter Cleveland, as the Special Representative of the defendant in the Pending Action, cannot act to zealously guard the interests of the Estate in the Pending Action when he is also a principal of the plaintiff in the Pending Action.

14. That the relevant statute for removal of a personal representative is IC 29-1-10-6, which provides in relevant part: "When the personal representative becomes incapacitated . . . , disqualified, unsuitable or incapable of discharging the representative's duties, has mismanaged

the Estate, failed to perform any duty imposed by law or by any lawful order of the court, or has ceased to be domiciled in Indiana, the Court may remove the representative . . . .”

15. That Peter Cleveland, as a principal of the plaintiff in the Pending Action, is unsuitable and/or incapable of discharging his duties as Special Representative due to the inherent conflict of interest of being a principal of the plaintiff while also serving at the same time as a defendant in the Pending Action.

16. That in the Pending Action, the law firm of Ice Miller LLP has filed its appearance on behalf of Crawfordsville Square, the plaintiff in the Pending Action.

17. That the law firm of Ice Miller LLP has filed its appearance on behalf of Peter Cleveland, as Special Representative, as a defendant in the Pending Action.

18. That Rule 1.7 of the Indiana Rules of Professional Conduct describes the situations in which an attorney is prohibited from representing clients with concurrent conflicts of interest and specifically provides that “. . . a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; and (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal (emphasis added); and (4) each affected client gives informed consent, confirmed in writing.” In the Pending Action, plaintiff’s attorney concurrently represents both the plaintiff and the defendant Chaney estates in the same litigation, clearly in violation of Rule 1.7.

19. That due to the inherent conflict in representing the plaintiff and a defendant in the Pending Action, Ice Miller LLP should be removed as the attorney for the Special Administrator.

20. That in light of Plaintiffs' claims the Estate has the right to the services of defense counsel provided by Hoosier, its insurer, and undersigned defense counsel, in providing such services, are obligated to protect the true interest of the Estate and are the only attorneys appearing for the Estate in this action who are without conflict of interest.

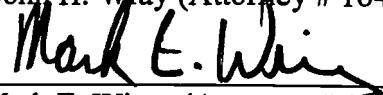
WHEREFORE, the Estate of Ruth S. Chaney, by defense counsel unaffiliated with Plaintiff, requests that this matter be set for hearing; that Peter Cleveland be removed as Special Administrator and that successor Special Administrator be appointed to complete the Estate's administration.

STEWART & IRWIN, P.C.

By:

  
Donn H. Wray (Attorney # 1643-49)

By:

  
Mark E. Wirey (Attorney # 15605-49)

Attorneys retained by Hoosier Insurance  
Company to defend the interests of the  
Estate of Ruth S. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 19<sup>th</sup> day of December, 2006:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leineaus Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319


Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

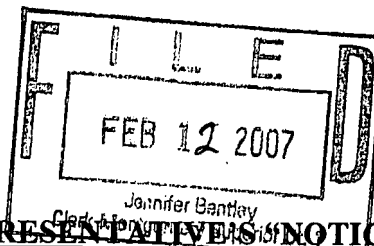
George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
Donn H. Wray (Attorney #1643-49)

STATE OF INDIANA ) IN THE MONTGOMERY SUPERIOR COURT ( )  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54D01-0609-ES-0075

IN RE: THE ESTATE OF )  
RUTH S. CHANEY )



**RESPONSE TO SPECIAL REPRESENTATIVE'S "NOTICE OF FILING" AND  
MOTION TO CLOSE ESTATE IN LIGHT OF ADMISSIONS MADE**

The Estate of Ruth S. Chaney, acting through defense counsel provided at the expense of Hoosier Insurance Company, responds to the Special Representative's "Notice of Filing" as follows:

The "Motion to Realign Parties" filed by plaintiffs Crawfordsville Square, LLC and Crawfordsville Square II, LLC<sup>1</sup> (collectively "Crawfordsville Square") in the Circuit Court sounds the death knell for any estate proceedings in this matter. There is no jurisdictional basis for maintaining the Estates — they must be closed and the personal representative dismissed.

In the "Verified Petition to Open the Estate..." filed September 29, 2006, Crawfordsville Square asked "that the Court open the Estate of Ruth S. Chaney, deceased, and appoint a Special Representative for the limited purposes as set forth in Indiana Code 29-1-14-1(f)." This occurred after Crawfordsville Square had purported to name "The Estate of Ruth Chaney" as a defendant in a Third Amended Complaint filed in the Circuit Court action.

In the "Motion to Realign the Parties" filed in the Circuit Court action counsel for Crawfordsville Square (and the Estates) admits:

<sup>1</sup> Oddly enough, the "Motion to Realign Parties" was filed by the same counsel who originally selected the parties' original purported alignment. It thus differs from the usual situation in which another party seeks realignment or the court orders realignment. Because the "Motion to Realign Parties" was filed by the same counsel who originally selected the alignment, it represents a startling change in position. Perhaps an amended complaint would have been more appropriate.

2. Because the time for making claims against the uninsured assets of the Estates of Ruth S. and William R. Chaney has long since passed, the Estates were opened for the limited purpose of collecting insurance proceeds. To the extent there has been a valid assignment per the parties' agreement, Crawfordsville Square, LLC and Crawfordsville Square II, LLC have no claims against the Chaney Estates.

"Motion to Realign the Parties" rhetorical paragraph 2.

In rhetorical paragraph 3, the Crawfordsville Square Entities admit that their claims against the Estate have been rendered "moot," and they proclaim that "if no relief is sought against a defendant, such defendants should be treated as a plaintiff." The purported jurisdictional grounds by which Crawfordsville Square could then purport to maintain the Ruth Chaney Estate as a nominal defendant to ostensibly pursue an insurance recovery are not specified or even discernible.

In the first paragraph of the "Motion to Realign the Parties" the Crawfordsville Square Entities admit:

When Crawfordsville Square, LLC ("Crawfordsville Square") purchased the site in question from Ruth Chaney, Ruth Chaney agreed to assign to Crawfordsville Square all of her rights and causes of action in this matter and, in exchange, Crawfordsville Square agreed to release any claims it had against Ruth Chaney. Based on this agreement, the Probate Court has appointed Pete Cleveland Special Representative of the Estates of Ruth S. and William R. Chaney.

The foregoing admissions coalesce as follows: (1) The Crawfordsville Square Entities can have no claim against the Estate of Ruth S. Chaney because they agreed to "release any claims [they] had against Ruth Chaney," but may proceed against entities other than the Estates as an assignee of Ruth Chaney, (2) there can be no claim against uninsured assets of the Estates and (3) no relief is being sought against either Chaney Estate.

This Court can only have jurisdiction over the Chaney Estates if the Crawfordsville Square Entities meet the requirements of I.C. 29-1-14-1(f). That exception to the limitation of actions against estates reads as follows:

Nothing in this section shall affect or prevent the enforcement of a claim for injury to person or damage to property arising out of negligence against the estate of a deceased tort feisor within the period of the statute of limitations provided for the tort action. A tort claim against the estate of the tort feisor may be opened or reopened and suit filed against the special representative of the estate within the period of the statute of limitations of the tort. Any recovery against the tort feisor's estate shall not affect any interest in the assets of the estate unless the suit was filed within the time allowed for filing claims against the estate. The rules of pleading and procedure in such cases shall be the same as apply in ordinary civil actions.

I.C. 29-1-14-1(f) (emphasis added) (hereinafter "Tort Claim Savings Statute").

Given the admissions contained in the "Motion to Realign the Parties" this Court should simply dismiss and close the Chaney Estates. Contrary to the representation in the "Motion to Realign Parties" they cannot be plaintiffs, because, as admitted by the Crawfordsville Square Entities, Ruth Chaney assigned any causes of action that she had prior to her death. They cannot be opened under I.C. 29-1-14-1(f) because, as admitted by Crawfordsville Square Entities, they are not negligent tort claim defendants against whom Crawfordsville Square purports to seek recovery to the extent of liability insurance. If the Crawfordsville Square Entities have claims against the Chaney's insurers under Ruth Chaney's assignment, the Crawfordsville Square Entities may litigate those claims themselves, as assignees, against any appropriate defendants. Estates are not necessary, or even appropriate under the pertinent law, for the Crawfordsville Square Entities to assert such claims.

In addition to serving judicial economy and economy among the litigating parties, closing the inappropriately opened Estates will resolve the conundrum created by the conduct of Peter

Cleveland and the Ice Miller law firm in representing the Crawfordsville Square Entities as plaintiffs simultaneously with the Chaney Estates as defendants against whom Ice Miller has ostensibly asserted claims in the Circuit Court action. The risk of a collusive settlement, whereby the same lawyer representing the plaintiff would represent the defendant in granting the plaintiffs' demands, while seeking to maintain inappropriately opened Estates under the guise of pursuing insurance claims and also attempting to preclude a real party in interest from engaging independent counsel to assert appropriate liability defenses available to the defendant, would be eliminated. An order closing the Chaney Estates would be an appropriate step to assist counsel for the Crawfordsville Square Entities and Mr. Cleveland with purging themselves of the hopelessly conflicted roles which they are now attempting to play by representing the Chaney Estates. Any legitimate interests of the Crawfordsville Square Entities to assert claims would not be impaired by the closing of the Chaney Estates because, as plaintiffs, the Crawfordsville Square Entities would be free to assert whatever they contend Ruth Chaney's assignment gave them, against entities other than the Estates.

This Court should, accordingly, simply close this Estate, discharge the Special Representative, and allow matters to proceed in the Circuit Court, where the "Motion to Realign Parties" will be responded to appropriately. The purported Chaney Estates, now shown to be opened under inappropriate grounds based upon the new positions taken in the "Motion to Realign Parties" must be closed. The Chaney Estates need play no further role in any litigation. Closing the Estates would have the added advantage of mooted the pending "Motion to Disqualify the Personal Representative and Counsel" filed on December 20, 2006, by the undersigned defense counsel for the Chaney Estates provided at the expense of Hoosier Insurance Company. On the other hand, if the Estates are not closed for any reason, the fact

remains that they must be represented by someone unaffiliated with the Crawfordsville Square plaintiffs.

One final allegation deserves comment: In the "Notice of Filing" counsel for the Crawfordsville Square Entities/Chaney Estates alludes to "the conflict of interest created by Hoosier's reservation of rights." Given that counsel has conceded that "no relief" is being sought against either Chaney Estate, there can be no issue arising from any "reservation of rights" because there should be no liability claim against the Chaney Estates to be defended based on what counsel for the Crawfordsville Square entities now has to say about the situation. Absent an applicable statutory basis the Crawfordsville Square entities and their representatives are divested of their ability to open and maintain the Chaney Estates. In any event, a "reservation of rights" goes to insurance coverage issues. Undersigned counsel, acting purely as defense counsel for the Estates provided by an insurance carrier, has no role in any coverage dispute. The undersigned has been engaged by a liability insurer to defend against the purported liability claims made by the Crawfordsville Square entities against the Chaney Estates. That insurer is a real party in interest, not the Chaney Estates: The "Motion to Realign Parties" establishes this fact beyond all doubt. The "Motion to Realign Parties" simultaneously debunks the claim that insurance defense counsel retained to defend the purported "Estates" has any conflict arising from such representation. Thus, the attempt to impute a "conflict" to the undersigned defense counsel through the Parthian shot of that last sentence misses its mark.

Given the convoluted history of these proceedings, a hearing on this motion may help expedite resolution of the case. Insurance defense counsel for the "Estates" accordingly requests a hearing.

WHEREFORE, in light of the admissions made in the "Motion to Realign Parties" the Estate of Ruth S. Chaney respectfully requests that the Estate be closed, the "Special Representative" be discharged, the previously filed "Petition to Remove Special Representative and His Counsel and Appoint Successor as Special Representative" be denied as moot, and for all other relief just and proper in the premises.

STEWART & IRWIN, P.C.

By:   
Donn H. Wray (Attorney # 1643-49)

Attorneys retained by Hoosier Insurance  
Company to defend the interests of the  
Estate of Ruth S. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 12<sup>th</sup> day of February, 2006:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leineaus Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319

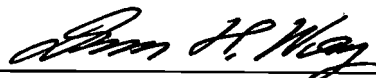
Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
Donn H. Wray (Attorney #1643-49)

STATE OF INDIANA ) IN THE MONTGOMERY CIRCUIT COURT  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54C01-0508-PL-00331

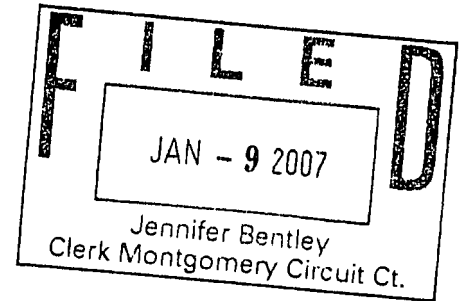
CRAWFORDSVILLE SQUARE, LLC and )  
CRAWFORDSVILLE SQUARE II, LLC, )

Plaintiffs, )

vs. )

ALLSTATE INSURANCE COMPANY, )  
HOOSIER INSURANCE COMPANY, )  
UNITED STATES FIDELITY & GUARANTY )  
INSURANCE COMPANY, LEINNEAUS )  
WHEELER, TAMARA YOUNT, RICK )  
BRIDWELL, THOMAS SHAVER, THE )  
ESTATE OF MARY L. SHAVER, THE )  
ESTATE OF J. NOEL SHAVER, and THE )  
ESTATES OF RUTH S. and WILLIAM R. )  
CHANEY, )

Defendants. )




**MOTION OF DEFENDANTS,**  
**THE "ESTATES OF RUTH S. AND WILLIAM R. CHANEY" FOR**  
**SUMMARY JUDGMENT PURSUANT TO T.R. 56**

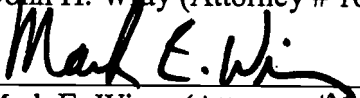
Pursuant to T. R. 56 the "Estates of Ruth S. and William R. Chaney", acting by and through defense counsel provided to defend the Estates at the expense of their liability insurance carrier, Hoosier Insurance Company, to move for summary judgment on all claims brought by plaintiffs, Crawfordsville Square, LLC and Crawfordsville Square II, LLC for the reason that there is no genuine issue as to any material fact and the moving parties are entitled to judgment as a matter of law.

The Court's attention is invited to the contemporaneously filed "Designation of Materials in Support of Motion of Defendants, the 'Estates of Ruth S. and William R. Chaney' for Summary Judgment Pursuant to T.R. 56" and the brief in support of this motion.

WHEREFORE Defendants, the "Estates of Ruth S. and William R. Chaney" move for summary judgment in their behalf and against all claims of plaintiffs, and for all other relief just and proper in the premises.

STEWART & IRWIN, P.C.

By:   
Donn H. Wray (Attorney # 1643-49)

By:   
Mark E. Wirey (Attorney # 15605-49)

Attorneys for the Estates of Ruth S. and  
William R. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 24 day of January, 2007:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leineaus Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319


Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
Donn H. Wray (Attorney #1643-49)

STATE OF INDIANA ) IN THE MONTGOMERY CIRCUIT COURT  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54C01-0508-PL-00331

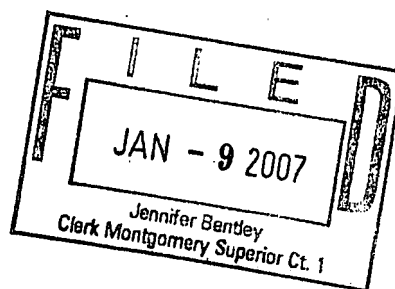
CRAWFORDSVILLE SQUARE, LLC and )  
CRAWFORDSVILLE SQUARE II, LLC, )

Plaintiffs, )

vs. )

ALLSTATE INSURANCE COMPANY, )  
HOOSIER INSURANCE COMPANY, )  
UNITED STATES FIDELITY & GUARANTY )  
INSURANCE COMPANY, LEINNEAUS )  
WHEELER, TAMARA YOUNT, RICK )  
BRIDWELL, THOMAS SHAVER, THE )  
ESTATE OF MARY L. SHAVER, THE )  
ESTATE OF J. NOEL SHAVER, and THE )  
ESTATES OF RUTH S. and WILLIAM R. )  
CHANEY, )

Defendants. )



**BRIEF IN SUPPORT OF MOTION OF DEFENDANTS,**  
**THE "ESTATES OF RUTH S. AND WILLIAM R. CHANEY" FOR**  
**SUMMARY JUDGMENT PURSUANT TO T.R. 56**

Entities referred to as the "Estates of Ruth S. and William R. Chaney" have purportedly been sued under color of a "Third Amended Complaint and Demand for Jury Trial" filed August 3, 2006. The Chaney Estates, pursuant to T.R. 56, and additional authorities as set forth below herein, acting by and through defense counsel provided to defend the Chaney Estates at the expense of Hoosier Insurance Company, seek judgment in their favor on all counts.

**I. UNDISPUTED FACTS**

1. Entities referred to as the "Estates of Ruth S. and William R. Chaney" were sued under color of a "Third Amended Complaint and Demand for Jury Trial" filed herein August 3, 2006. (See "Third Amended Complaint and Demand for Jury Trial").

2. Nowhere in the suit materials purporting to advance claims against the Estates is the purported personal representative of the Estates named. (Id).

3. The Estate of Ruth Chaney was not opened, nor was a “special representative” appointed, until October 2, 2006 — nearly two months after the Third Amended Complaint was filed. (See “Order Opening the Estate of Ruth S. Chaney and Appointing a Special Representative” filed in Montgomery Superior Court 1 54D01-0609-ES-0075). (Tab “A” attached to contemporaneously filed “Designation of Materials.”)

4. The Estate of William R. Chaney was not opened, nor was a “special representative” appointed, until October 2, 2006 — nearly two months after the Third Amended Complaint was filed. (See “Order Opening the Estate of William R. Chaney and Appointing a Special Representative” filed in Montgomery Superior Court 1 54D01-0609-ES-0076). (Tab “B” attached to contemporaneously filed “Designation of Materials.”)

5. William R. Chaney died on October 27, 1996. (See rhetorical paragraph 1 of “Verified Petition to Open the Estate of William R. Chaney, deceased, and to Appoint a Special Representative” filed on or about September 28, 2006 under cause number 54D01-0609-ES-0076). (Tab “C” attached to contemporaneously filed “Designation of Materials.”)

6. Ruth S. Chaney died on March 20, 2001. (See rhetorical paragraph 1 of “Verified Petition to Open the Estate of Ruth S. Chaney, deceased, and to Appoint a Special Representative” filed on or about September 28, 2006 under cause number 54D01-0609-ES-0075). (Tab “D” attached to contemporaneously filed “Designation of Materials.”)

7. Plaintiffs, Crawfordsville Square, LLC and Crawfordsville Square II, LLC never filed any claim in the Estate of either Ruth S. or William R. Chaney within one year of the date of either Mr. or Mrs. Chaney’s death. (*passim*).

8. The “Third Amended Complaint” seeks damages against the “Chaney Estates” under color of I.C. 13-30-9-2 and I.C. 13-30-9-3. (See rhetorical paragraphs 53 and 54 of “Third Amended Complaint”).

9. Additionally, the Crawfordsville Square plaintiffs assert "claims as assignees of the Chaney." (See caption and rhetorical paragraphs 64 through 69 of "Third Amended Complaint").

10. I.C. 13-30-9 is known as the "Environmental Legal Action" statute. (I.C. 13-30-9).

11. In seeking to open estates for Mr. and Mrs. Chaney, the "special representative" requested appointment "for the limited purposes as set forth in Indiana Code 29-1-14-1(f)." ("Verified Petition to Open the Estate of William R. Chaney, deceased and to Appoint a Special Representative"; "Verified Petition to Open the Estate of Ruth S. Chaney, deceased and to Appoint a Special Representative").

## **II. LAW**

### **A. PLAINTIFFS SEEK RECOVERY AGAINST THE "CHANNEY ESTATES" UNDER COLOR OF THE ENVIRONMENTAL LEGAL ACTION STATUTE (I.C. 13-30-9) AND AS "ASSIGNEES OF THE CHANEYS." NEITHER CLAIM IS SUBJECT TO THE SAVING PROVISION OF I.C. 29-1-14-1(f) AND THUS ALL SUCH CLAIMS ARE TIME BARRED.**

In petitioning to open the Chaney Estates, the "special representative" stated in his Verified Petition that he wished to proceed "for the limited purposes as set forth in Indiana Code 29-1-14-1(f)." That statute reads as follows:

Nothing in this section shall affect or prevent the enforcement of a claim for injury to person or damage to property arising out of negligence against the estate of a deceased tort feisor within the period of the statute of limitations provided for the tort action. A tort claim against the estate of the tort feisor may be opened or reopened and suit filed against the special representative of the estate within the period of the statute of limitations of the tort. Any recovery against the tort feisor's estate shall not affect any interest in the assets of the estate unless the suit was filed within the time allowed for filing claims against the estate. The rules of pleading and procedure in such cases shall be the same as apply in ordinary civil actions.

I.C. 29-1-14-1(f) (emphasis added) (hereinafter "Tort Claim Savings Statute").

This provision is in the nature of a "Savings Statute" that allows claims against estates to proceed that would otherwise be time barred. However, in order to pass through the eye of this needle, a claim must meet the criteria of the statute. It is passing clear from a reading of the statute that only tort claims sounding in negligence are covered by the statute. The first sentence of the Tort Claims Savings Statute limits its application to "a claim for injury to person or damage to property arising out of negligence against the estate of a deceased tort feisor within the period of the statute of limitations provided for the tort action." The word "tort" or "tort feisor" appears in the Tort Claims Savings Statute no fewer than six (6) times. The plain language of the statute thus limits its application to negligent tort claims.

**1. Claims under the Environmental Legal Action statute are not negligent tort claims.**

We have seen that in order to make a belated claim against an estate under I.C. 29-1-14-1(f), the Tort Claims Savings Statute, the claim must be for tort sounding in negligence. It now must be determined whether a claim brought under the "Environmental Legal Action" statute is such a negligent tort. Manifestly, it is not.

Liability is imposed by the Environmental Legal Action statute ("ELA") under I.C. 13-30-9-2 ("Grounds"). That statute provides:

A person may bring an environmental legal action against a person who caused or contributed to the release of a hazardous substance or petroleum into the surface or subsurface soil or groundwater that poses a risk to human health and the environment to recover reasonable costs of a removal or remedial action involving the hazardous substances or petroleum.

I.C. 13-30-9-2.

All that is required for liability to attach under the ELA is for a defendant to "cause or contribute to the release of a hazardous substance or petroleum into the surface or subsurface soil or groundwater that poses a risk to human health and the environment..." In this regard, the

ELA has been held to be analogous to the Federal Comprehensive Environmental Response Compensation Liability Act ("CERCLA") or ("Superfund Act"). Armstrong Cleaners, Inc. v. Eric Insurance Exchange 364 F. Supp. 797, 813 (S.D. Ind. 2005)("Ind. Code § 13-30-9-2 is analogous to CERCLA's § 107(a) cost-recovery provision.") Citing Northstar Partners v. S&S Consultants, Inc., 2004 U.S. Dist. Lexis 7799, \*22-23 (S.D. Ind. March 31, 2004), citing Taylor Farm Limited Liability Co. v. Viacom, Inc., 234 F. Supp. 2d 950 (S.D. Ind. 2002); Commercial Logistics Corp. v. ACF Industries, Inc., 2004 U.S. dist. Lexis 23140, \*11-14 (S.D. Ind. Nov. 10, 2004). One touchstone of CERCLA (and hence ELA) analysis is that negligence need not be alleged nor proven:

To prove liability against the Armstrongs under § 13-30-9-2 and § 13-30-9-5, State Farm is not required to prove that the Armstrongs expected or intended any contamination, or even that they acted negligently. The statute requires a trier of fact to determine only whether the Armstrongs "caused or contributed to" the contamination at the Tillotson location, not to determine the Armstrongs' state of mind or level of culpability.

Armstrong, supra at 811.

We have seen that "negligence" is a required element for a cause of action to be preserved under the Tort Claims Savings Statute. A claim under the ELA is not dependent upon negligence, therefore the plaintiffs' ELA claims against the Chaney Estates cannot obtain the benefit of the Tort Claims Savings Statute and are thus time barred.

Claims brought under color of the ELA are not "torts" of any other form, either. Indiana has adopted the definition of "tort" from Black's Law Dictionary. That definition is:

A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual.

Holtz v. Board of Commissioners of Elkhart County, Indiana 560 N.E. 2d 645

(Ind. 1990).

Even under this broadest of definitions, a claim under the ELA does not qualify as a “tort.” One may be liable under the ELA, or CERCLA, for actions that were entirely lawful at the time they were taken. “Consequently, claims that a party was not negligent or that its activities were consistent with standard industry practices provide no defense to liability.”

Environmental Law Handbook (18<sup>th</sup> ed 2005) at 495. See also, United States v. Monsanto, Co., 858 F. 2d 160, 174 (4<sup>th</sup> Cir. 1988) (waste disposal methods that were technically legal before CERCLA’s enactment still subject to CERCLA liability). Thus, no “wrong” need be committed in order to be liable under the ELA’s ameliorative provisions. So in addition to not being a product of, or dependent upon, the existence of “negligence,” a claim under the ELA does not embody the elements of any other type of non-negligent “tort.” No legal “wrong” need be shown for liability to attach. For this additional reason the plaintiffs’ claims against the Chaney Estates are barred as untimely because they fail to pass through the filter of I.C. 29-1-14-1(f), the Tort Claims Savings Statute.

**2. Claims by plaintiffs against the Chaney “as assignees of the Chaney” are not negligent torts and are therefore barred as untimely.**

Claims brought against the Chaney by the plaintiffs as “assignees” of the Chaney are likewise time barred.<sup>1</sup> Any first year law student should discern that a claim brought against another under a contractual assignment is simply not a tort claim or a negligence claim. Thus, the claims the plaintiffs seek to advance against the Chaney Estates as their “assignees” also fail to

---

<sup>1</sup> For the purpose of this Motion the Chaney Estates do not explore the curious question of whether the plaintiffs have any claims against the Chaney independent of what may have been assigned. The purpose of this first summary judgment motion is to terminate litigation at its earliest stage based upon the glaring facial inadequacies of the claims advanced. However, in addition to the issues raised here, there are many other serious defects in the plaintiffs’ positions, which should be rendered moot by the disposition of this motion.

pass through the filter of I.C. 29-1-14-1(f), the Tort Claims Savings Statute, are time barred, and must fail.

**B. THE PLAINTIFFS' CLAIMS BROUGHT AGAINST THE "CHANEY ESTATES" ARE LEGAL NULLITIES.**

It is black letter probate law in Indiana, of long standing, that an estate may only sue or be sued by its personal representative. This is reflected in I.C. 29-1-14-1(f) itself: "A tort claim against the estate of the tortfeasor may be opened or reopened and suit filed against the special representative of the estate..." (emphasis added). "Since a decedent's estate is not a legal entity, actions on behalf of the estate can only be brought by a person legally qualified to do so." Gordon, Kolb, Cremer, 2 Henry's Indiana Probate Law and Practice (2006) §14.01 at 14-2 citing Dallam v. Stockwell, 33 Ind. App. 620, 71 N.E. 911 (1904) and Carr v. Schneider, 114 Ind. App. 149, 51 N.E. 2d 392 (1943), for the proposition that: "The estate of a dead man cannot be a party to a suit without some representative; and the suit should be carried on in the name of the representative as such." Simple reference to the case caption of the "Third Amended Complaint" reveals that this did not occur here. Peter Cleveland, a corporate officer of plaintiffs also acting as "special representative" of the Chaney Estates, is not named in the case caption. The reason for Mr. Cleveland's omission from being named as a party in his capacity as special representative need not be speculated upon here.<sup>2</sup> It simply suffices to say here that the pending legal action purportedly against the "Chaney Estates" before this Court is a legal nullity because it has not been prosecuted under the prescribed form.

**C. AT THE TIME THE "THIRD AMENDED COMPLAINT" WAS FILED NO CHANEY ESTATES EXISTED AND THE COMPLAINT IS THUS A LEGAL NULLITY.**

The "Third Amended Complaint" was filed on August 3, 2006 purporting to name the "Chaney Estates" as discussed above. The problem is, at the time that Complaint was filed no

---

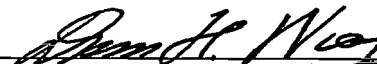
<sup>2</sup> On December 20, 2006 the Chaney Estates, acting through defense counsel retained by their insurance carrier, have filed petitions to remove the special representative and his counsel due to this apparent conflict of interest.

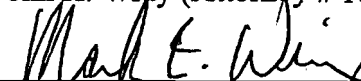
such legal entity existed. Assuming, arguendo the Estates could even be properly opened (see issue A supra) the fact remains that no estate for either Chaney existed until October 2, 2006, nearly two months after the Complaint at issue was filed. And, as discussed in the immediately preceding issue, the personal representative has never been named or sued in the proper form. The entire pending proceeding against the Chaney Estates in this Court is a legal nullity that must be dismissed.

### III CONCLUSION

The plaintiffs have no claim against the "Chaney Estates." Neither their Environmental Legal Action claim nor their claim "as assignees of the Chaney's" qualifies under the Tort Claims Savings Statute, I.C. 29-1-14-1(f), which is limited by its plain language to negligent tort claims. An estate may only sue or be sued by its personal representative, yet this has not occurred here. An estate must be in existence at the time a Complaint is filed against it, yet this has not occurred here. Summary Judgment or dismissal must be entered against all claims of the plaintiffs against the "Chaney Estates." The Chaney Estates request this and all other proper relief.

STEWART & IRWIN, P.C.

By:   
Donn H. Wray (Attorney # 1643-49)

By:   
Mark E. Wirey (Attorney # 15605-49)

Attorneys for the Estates of Ruth S. and  
William R. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 5<sup>th</sup> day of January, 2007:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leineaus Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319

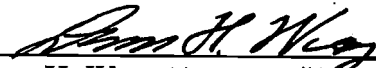
Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
Donn H. Wray (Attorney #1643-49)

**STATE OF INDIANA  
MONTGOMERY COUNTY CIRCUIT COURT**

CRAWFORDSVILLE SQUARE, LLC and  
CRAWFORDSVILLE SQUARE II, LLC,

Plaintiffs,

v.

CAUSE NO. 54C01 0508 PL 00331

ALLSTATE INSURANCE COMPANY,  
HOOSIER INSURANCE COMPANY,  
UNITED STATES FIDELITY & GUARANTY  
INSURANCE COMPANY, LINNAEUS  
WHEELER, TAMARA YOUNT, RICK  
BRIDWELL, THOMAS SHAVER, THE  
ESTATE OF MARY L. SHAVER, THE  
ESTATE OF J. NOEL SHAVER, and THE  
ESTATES OF RUTH S. and WILLIAM R.  
CHANNEY,

Defendants.

**MOTION TO REALIGN THE PARTIES**

Plaintiffs Crawfordsville Square, LLC and Crawfordsville Square II, LLC and Cross-claim Defendants the Estates of Ruth S. and William R. Chaney respectfully move to realign the parties such that the Special Representative of the Estates of Ruth S. and William R. Chaney is made a Plaintiff in this matter to comport with the actual claims and interests of the parties. In support of this motion, Plaintiffs and Cross-claim Defendants state:

1. When Crawfordsville Square, LLC ("Crawfordsville Square") purchased the site in question from Ruth Chaney, Ruth Chaney agreed to assign to Crawfordsville Square all of her rights and causes of action in this matter and, in exchange, Crawfordsville Square agreed to release any claims it had against Ruth Chaney. Based on this agreement, the probate court has

appointed Pete Cleveland Special Representative of the Estates of Ruth S. and William R. Chaney.

2. Because the time for making claims against the uninsured assets of the Estates of Ruth S. and William R. Chaney has long since passed, the Estates were opened for the limited purpose of collecting insurance proceeds. To the extent that there has been a valid assignment per the parties' agreement, Crawfordsville Square, LLC and Crawfordsville Square II, LLC have no claims against the Chaney Estates.

3. The appointment of Mr. Cleveland as the Special Representative of the Estates of Ruth S. and William R. Chaney thus renders moot the claims of Plaintiffs against the Chaney Estates. Realignment is necessary where the parties, as here, are in "substantial accord upon all issues presented." Chase Nat. Bank of City of New York v. Citizens Gas Co. of Indianapolis, 96 F.2d 363, 367 (7<sup>th</sup> Cir. 1938). If no relief is sought against a defendant, such defendant should be treated as a plaintiff. Id.; see also Northern Indiana Public Service Co. v. G.V.K. Corp., 713 N.E.2d 842, 847 (Ind. Ct. App. 1999) (trial court's decision to realign parties was "a proper exercise of judicial discretion in an effort to achieve judicial economy and effect the orderly administration of the trial.").

4. Realigning the parties in this case will reflect the parties' true interests, thus promoting judicial economy. Therefore, Crawfordsville Square, LLC, Crawfordsville Square II, LLC, and Cross-Claim Defendants the Estates of Ruth S. and William R. Chaney respectfully move that the Court realign the parties such that the Estates of Ruth S. and William R. Chaney are made Plaintiffs in this action.

5. Plaintiffs Crawfordsville Square, LLC and Crawfordsville Square II, LLC and Cross-claim Defendants the Estates of Ruth S. and William R. Chaney are submitting

contemporaneously herewith a *proposed* Order containing a caption reflecting the realignment of the parties to include Peter Cleveland as the Special Representative of the Estates of Ruth S. and William R. Chaney as Plaintiff in this matter.

Respectfully submitted,

ICE MILLER LLP

A handwritten signature in dark ink, appearing to read "Angela P. Krahulik", is written over a horizontal line.

Brent W. Huber, Atty. No. 16077-53

Angela P. Krahulik, Atty. No. 23036-49

Attorneys for Plaintiffs, Crawfordsville Square,  
LLC and Crawfordsville Square II, LLC, and  
Cross-claim Defendants, the Estates of W. R. and  
Ruth Chaney

ICE MILLER LLP  
One American Square  
Suite 3100  
Indianapolis, IN 46282  
(317) 236-2100

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been deposited in the U.S. mail, first-class postage prepaid, on the 7<sup>th</sup> day of February, 2007, addressed to:

Rex Henthorn  
HENTHORN, HARRIS & WELIEVER  
122 East Main Street  
Crawfordsville, IN 47933  
Attorney for Linnaeus Wheeler

Paul S. Kruse  
PARR RICHEY OBREMSKEY & MORTON  
225 West Main Street  
Post Office Box 668  
Lebanon, IN 46052  
Attorney for Tom Shaver and Estate of Mary Shaver  
And Estate of J. Noel Shaver

Kenneth Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
Attorney for Tamara Yount

Gregory P. Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
Attorney for Rick Bridwell and  
Allstate Insurance Company

Theodore Blanford  
HUME SMITH GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle  
Fourth Floor  
Indianapolis, IN 46204  
Attorney for Hoosier Insurance Company

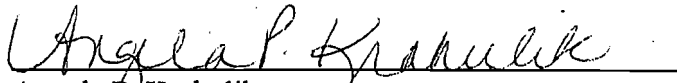
Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 East Washington Street, Fourth Floor  
Indianapolis, IN 46204  
Attorney for United States Fidelity & Guaranty

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
Attorney for United States Fidelity & Guaranty

Michael D. Almassian  
PLUNKETT & COONEY, PC  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
Attorney for United States Fidelity & Guaranty

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202-2415  
Attorney for Tamara Yount in Hoosier's DJ

Donn H. Wray  
Mark E. Wirey  
STEWART & IRWIN, P.C.  
251 East Ohio St., Suite 1100  
Indianapolis, IN 46204-2142

  
Angela P. Krahulik

ICE MILLER LLP  
One American Square  
Suite 3100  
Indianapolis, IN 46282  
(317) 236-2100

STATE OF INDIANA ) IN THE MONTGOMERY CIRCUIT COURT  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54C01-0508-PL-00331

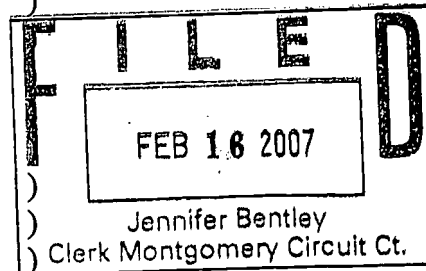
CRAWFORDSVILLE SQUARE, LLC and  
CRAWFORDSVILLE SQUARE II, LLC,

Plaintiffs,

vs.

ALLSTATE INSURANCE COMPANY,  
HOOSIER INSURANCE COMPANY,  
UNITED STATES FIDELITY & GUARANTY  
INSURANCE COMPANY, LEINNEAUS  
WHEELER, TAMARA YOUNT, RICK  
BRIDWELL, THOMAS SHAVER, THE  
ESTATE OF MARY L. SHAVER, THE  
ESTATE OF J. NOEL SHAVER, and THE  
ESTATES OF RUTH S. and WILLIAM R.  
CHANNEY,

Defendants.



**NOTICE OF FILING IN PROBATE COURT PROCEEDINGS,  
RESPONSE TO "MOTION TO REALIGN THE PARTIES" AND MOTION  
TO DISMISS CHANEY ESTATES IN LIGHT OF ADMISSIONS MADE**

The "Estates of Ruth S. and William R. Chaney", acting by and through defense counsel provided to defend the Chaney Estates at the expense of Hoosier Insurance Company, respond to the "Motion to Realign the Parties" filed in this Court by notifying it of filings made recently in the Probate Court addressed to the same issue, copies of which are attached. Additionally, in light of the admissions made in the "Motion to Realign the Parties" the "Chaney Estates" should be dismissed from the litigation. The "Motion to Realign" should also be denied for the reasons set forth below. Any change in the pleadings arising from the changes in position filed by Ice Miller must be set forth in an Amended Complaint.

**The "Motion to Realign" — Filed by the Same Counsel who Selected the Original  
Alignment of Parties — is Improper**

At the outset, it is significant that the "Motion to Realign the Parties" was filed by the same counsel who originally selected the alignment of the parties. It thus differs from the usual

situation in which another party might seek realignment or the Court orders realignment. Because the "Motion to Realign the Parties" was filed by the same counsel who originally selected the alignment, which included the "Chaney Estates" as defendants against whom liability claims were being pursued, the Motion represents a startling change in position. The Motion also contains a series of significant admissions that, if given effect by this Court, will greatly simplify this litigation and eliminate many troublesome issues engendered by the same lawyers attempting to simultaneously represent the Crawfordsville Square Entities as plaintiffs and the "Chaney Estates" as defendants.

Notwithstanding that by virtue of the admissions contained therein the "Motion to Realign" should result in simplification of the issues, the Motion should be denied. Without explaining what claims they have as plaintiffs, or giving any "short and plain statement of the claim showing the plaintiff is entitled to relief" as required by T.R. 8 (A)(1), the "Chaney Estates"/Crawfordsville Square lawyers try to recycle their Third Amended Complaint by superimposing upon it the "Chaney Estates" as plaintiffs. Given the absence of any averments stating what the "Estates" now seek, it is impossible to discern what claims the "Estates" are making in their new role. The defendants must not be required to speculate what counsel for the Crawfordsville Square Entities has in mind now. Only an Amended Complaint could accomplish properly what it appears counsel is attempting to do. The "Motion to Realign" must therefore be denied.

**Given the Admissions contained in the "Motion to Realign" the Estates must be Dismissed from this Action**

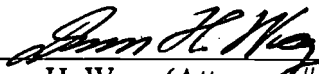
In addition to the reasons set forth in the attached Probate Court filings, given the admissions contained in the "Motion to Realign the Parties" the "Chaney Estates" should be dismissed from this case. In support of this assertion, the "Chaney Estates" incorporate, by reference, the "Response to Special Representative's 'Notice of Filing' and Motion to Close

Estate in Light of Admissions Made” filed in each of the Estates in the Probate Court, attached hereto.

The admissions made in the “Motion to Realign the Parties” establish: (1) the Crawfordsville Square Entities can have no claim against the Estate of Ruth S. Chaney because they agreed to “release any claims [they] had against Ruth Chaney,” but may proceed against entities other than the Estates as an assignee of Ruth Chaney, (2) there can be no claim against the uninsured assets of either Chaney Estate and (3) no relief is being sought against either Chaney Estate. Given this change in position, it is clear that the “Chaney Estates” cannot be defendants. By the same token, they can have no role as plaintiffs: Counsel for the Crawfordsville Square Entities has contended that Ruth Chaney assigned her claims to the Crawfordsville Square Entities prior to her death. If that is true, there can be nothing left for Ruth Chaney (and, derivatively, her Estate) to “claim” against any person, therefore the Estate has no role to play as a plaintiff. Similarly, although William R. Chaney never assigned anything to the Crawfordsville Square Entities, they contend that they have acquired whatever claims he may have had derivatively through Ruth Chaney’s assignment as Mr. Chaney’s surviving spouse. Either way, there is no jurisdictional basis for the “Chaney Estates” to be open in the absence of liability claims being made against them to the extent of liability insurance.

It is time to put an end to the needless complexity and confusion created in this proceeding by the Crawfordsville Square Entities’ opening and inclusion of the “Chaney Estates” as parties. It is time for the Estates to go. Thus, irrespective of what the Probate Court does, the Estates should be dismissed from this case and the Crawfordsville Square Entities should be directed to file an appropriately Amended Complaint consistent with the representations and admissions made by Ice Miller in its “Motion to Realign the Parties.”

STEWART & IRWIN, P.C.

By:   
Donn H. Wray (Attorney # 1643-49)  
Attorney for the Estates of Ruth S. and  
William R. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 16<sup>th</sup> day of February, 2007:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leineaus Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319

Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
Donn H. Wray (Attorney #1643-49)

STATE OF INDIANA ) IN THE MONTGOMERY SUPERIOR COURT  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54D01-0609-ES-0075

IN RE: THE ESTATE OF )  
RUTH S. CHANEY )

**RESPONSE TO SPECIAL REPRESENTATIVE'S "NOTICE OF FILING" AND  
MOTION TO CLOSE ESTATE IN LIGHT OF ADMISSIONS MADE**

The Estate of Ruth S. Chaney, acting through defense counsel provided at the expense of Hoosier Insurance Company, responds to the Special Representative's "Notice of Filing" as follows:

The "Motion to Realign Parties" filed by plaintiffs Crawfordsville Square, LLC and Crawfordsville Square II, LLC<sup>1</sup> (collectively "Crawfordsville Square") in the Circuit Court sounds the death knell for any estate proceedings in this matter. There is no jurisdictional basis for maintaining the Estates — they must be closed and the personal representative dismissed.

In the "Verified Petition to Open the Estate..." filed September 29, 2006, Crawfordsville Square asked "that the Court open the Estate of Ruth S. Chaney, deceased, and appoint a Special Representative for the limited purposes as set forth in Indiana Code 29-1-14-1(f)." This occurred after Crawfordsville Square had purported to name "The Estate of Ruth Chaney" as a defendant in a Third Amended Complaint filed in the Circuit Court action.

In the "Motion to Realign the Parties" filed in the Circuit Court action counsel for Crawfordsville Square (and the Estates) admits:

<sup>1</sup> Oddly enough, the "Motion to Realign Parties" was filed by the same counsel who originally selected the parties' original purported alignment. It thus differs from the usual situation in which another party seeks realignment or the court orders realignment. Because the "Motion to Realign Parties" was filed by the same counsel who originally selected the alignment, it represents a startling change in position. Perhaps an amended complaint would have been more appropriate.



2. Because the time for making claims against the uninsured assets of the Estates of Ruth S. and William R. Chaney has long since passed, the Estates were opened for the limited purpose of collecting insurance proceeds. To the extent there has been a valid assignment per the parties' agreement, Crawfordsville Square, LLC and Crawfordsville Square II, LLC have no claims against the Chaney Estates.

"Motion to Realign the Parties" rhetorical paragraph 2.

In rhetorical paragraph 3, the Crawfordsville Square Entities admit that their claims against the Estate have been rendered "moot," and they proclaim that "if no relief is sought against a defendant, such defendants should be treated as a plaintiff." The purported jurisdictional grounds by which Crawfordsville Square could then purport to maintain the Ruth Chaney Estate as a nominal defendant to ostensibly pursue an insurance recovery are not specified or even discernible.

In the first paragraph of the "Motion to Realign the Parties" the Crawfordsville Square Entities admit:

When Crawfordsville Square, LLC ("Crawfordsville Square") purchased the site in question from Ruth Chaney, Ruth Chaney agreed to assign to Crawfordsville Square all of her rights and causes of action in this matter and, in exchange, Crawfordsville Square agreed to release any claims it had against Ruth Chaney. Based on this agreement, the Probate Court has appointed Pete Cleveland Special Representative of the Estates of Ruth S. and William R. Chaney.

The foregoing admissions coalesce as follows: (1) The Crawfordsville Square Entities can have no claim against the Estate of Ruth S. Chaney because they agreed to "release any claims [they] had against Ruth Chaney," but may proceed against entities other than the Estates as an assignee of Ruth Chaney, (2) there can be no claim against uninsured assets of the Estates and (3) no relief is being sought against either Chaney Estate.

This Court can only have jurisdiction over the Chaney Estates if the Crawfordsville Square Entities meet the requirements of I.C. 29-1-14-1(f). That exception to the limitation of actions against estates reads as follows:

Nothing in this section shall affect or prevent the enforcement of a claim for injury to person or damage to property arising out of negligence against the estate of a deceased tortfeasor within the period of the statute of limitations provided for the tort action. A tort claim against the estate of the tortfeasor may be opened or reopened and suit filed against the special representative of the estate within the period of the statute of limitations of the tort. Any recovery against the tortfeasor's estate shall not affect any interest in the assets of the estate unless the suit was filed within the time allowed for filing claims against the estate. The rules of pleading and procedure in such cases shall be the same as apply in ordinary civil actions.

I.C. 29-1-14-1(f) (emphasis added) (hereinafter "Tort Claim Savings Statute").

Given the admissions contained in the "Motion to Realign the Parties" this Court should simply dismiss and close the Chaney Estates. Contrary to the representation in the "Motion to Realign Parties" they cannot be plaintiffs, because, as admitted by the Crawfordsville Square Entities, Ruth Chaney assigned any causes of action that she had prior to her death. They cannot be opened under I.C. 29-1-14-1(f) because, as admitted by Crawfordsville Square Entities, they are not negligent tort claim defendants against whom Crawfordsville Square purports to seek recovery to the extent of liability insurance. If the Crawfordsville Square Entities have claims against the Chaney's insurers under Ruth Chaney's assignment, the Crawfordsville Square Entities may litigate those claims themselves, as assignees, against any appropriate defendants. Estates are not necessary, or even appropriate under the pertinent law, for the Crawfordsville Square Entities to assert such claims.

In addition to serving judicial economy and economy among the litigating parties, closing the inappropriately opened Estates will resolve the conundrum created by the conduct of Peter

Cleveland and the Ice Miller law firm in representing the Crawfordsville Square Entities as plaintiffs simultaneously with the Chaney Estates as defendants against whom Ice Miller has ostensibly asserted claims in the Circuit Court action. The risk of a collusive settlement, whereby the same lawyer representing the plaintiff would represent the defendant in granting the plaintiffs' demands, while seeking to maintain inappropriately opened Estates under the guise of pursuing insurance claims and also attempting to preclude a real party in interest from engaging independent counsel to assert appropriate liability defenses available to the defendant, would be eliminated. An order closing the Chaney Estates would be an appropriate step to assist counsel for the Crawfordsville Square Entities and Mr. Cleveland with purging themselves of the hopelessly conflicted roles which they are now attempting to play by representing the Chaney Estates. Any legitimate interests of the Crawfordsville Square Entities to assert claims would not be impaired by the closing of the Chaney Estates because, as plaintiffs, the Crawfordsville Square Entities would be free to assert whatever they contend Ruth Chaney's assignment gave them, against entities other than the Estates.

This Court should, accordingly, simply close this Estate, discharge the Special Representative, and allow matters to proceed in the Circuit Court, where the "Motion to Realign Parties" will be responded to appropriately. The purported Chaney Estates, now shown to be opened under inappropriate grounds based upon the new positions taken in the "Motion to Realign Parties" must be closed. The Chaney Estates need play no further role in any litigation. Closing the Estates would have the added advantage of mooted the pending "Motion to Disqualify the Personal Representative and Counsel" filed on December 20, 2006, by the undersigned defense counsel for the Chaney Estates provided at the expense of Hoosier Insurance Company. On the other hand, if the Estates are not closed for any reason, the fact

remains that they must be represented by someone unaffiliated with the Crawfordsville Square plaintiffs.

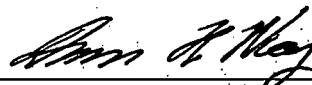
One final allegation deserves comment: In the "Notice of Filing" counsel for the Crawfordsville Square Entities/Chaney Estates alludes to "the conflict of interest created by Hoosier's reservation of rights." Given that counsel has conceded that "no relief" is being sought against either Chaney Estate, there can be no issue arising from any "reservation of rights" because there should be no liability claim against the Chaney Estates to be defended based on what counsel for the Crawfordsville Square entities now has to say about the situation. Absent an applicable statutory basis the Crawfordsville Square entities and their representatives are divested of their ability to open and maintain the Chaney Estates. In any event, a "reservation of rights" goes to insurance coverage issues. Undersigned counsel, acting purely as defense counsel for the Estates provided by an insurance carrier, has no role in any coverage dispute. The undersigned has been engaged by a liability insurer to defend against the purported liability claims made by the Crawfordsville Square entities against the Chaney Estates. That insurer is a real party in interest, not the Chaney Estates: The "Motion to Realign Parties" establishes this fact beyond all doubt. The "Motion to Realign Parties" simultaneously debunks the claim that insurance defense counsel retained to defend the purported "Estates" has any conflict arising from such representation. Thus, the attempt to impute a "conflict" to the undersigned defense counsel through the Parthian shot of that last sentence misses its mark.

Given the convoluted history of these proceedings, a hearing on this motion may help expedite resolution of the case. Insurance defense counsel for the "Estates" accordingly requests a hearing.

WHEREFORE, in light of the admissions made in the "Motion to Realign Parties" the Estate of Ruth S. Chaney respectfully requests that the Estate be closed, the "Special Representative" be discharged, the previously filed "Petition to Remove Special Representative and His Counsel and Appoint Successor as Special Representative" be denied as moot, and for all other relief just and proper in the premises.

STEWART & IRWIN, P.C.

By:



Donn H. Wray (Attorney # 1643-49)

Attorneys retained by Hoosier Insurance  
Company to defend the interests of the  
Estate of Ruth S. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 12<sup>th</sup> day of February, 2006:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leineaus Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319

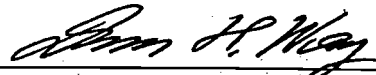
Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
Donn H. Wray (Attorney #1643-49)

STATE OF INDIANA ) IN THE MONTGOMERY SUPERIOR COURT  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54D01-0609-ES-0076

IN RE: THE ESTATE OF )  
WILLIAM R. CHANEY )

**RESPONSE TO SPECIAL REPRESENTATIVE'S "NOTICE OF FILING" AND  
MOTION TO CLOSE ESTATE IN LIGHT OF ADMISSIONS MADE**

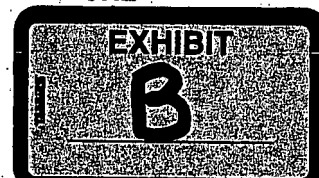
The Estate of William R. Chaney, acting through defense counsel provided at the expense of Hoosier Insurance Company, responds to the Special Representative's "Notice of Filing" as follows:

The "Motion to Realign Parties" filed by plaintiffs Crawfordsville Square, LLC and Crawfordsville Square II, LLC<sup>1</sup> (collectively "Crawfordsville Square") in the Circuit Court sounds the death knell for any estate proceedings in this matter. There is no jurisdictional basis for maintaining the Estates — they must be closed and the personal representative dismissed.

In the "Verified Petition to Open the Estate..." filed September 29, 2006, Crawfordsville Square asked "that the Court open the Estate of William R. Chaney, deceased, and appoint a Special Representative for the limited purposes as set forth in Indiana Code 29-1-14-1(f)." This occurred after Crawfordsville Square had purported to name "The Estate of William R. Chaney" as a defendant in a Third Amended Complaint filed in the Circuit Court action.

In the "Motion to Realign the Parties" filed in the Circuit Court action counsel for Crawfordsville Square (and the Estates) admits:

<sup>1</sup> Oddly enough, the "Motion to Realign Parties" was filed by the same counsel who originally selected the parties' original purported alignment. It thus differs from the usual situation in which another party seeks realignment or the court orders realignment. Because the "Motion to Realign Parties" was filed by the same counsel who originally selected the alignment, it represents a startling change in position. Perhaps an amended complaint would have been more appropriate.



2. Because the time for making claims against the uninsured assets of the Estates of William R. and William R. Chaney has long since passed, the Estates were opened for the limited purpose of collecting insurance proceeds. To the extent there has been a valid assignment per the parties' agreement, Crawfordsville Square, LLC and Crawfordsville Square II, LLC have no claims against the Chaney Estates.

"Motion to Realign the Parties" rhetorical paragraph 2.

In rhetorical paragraph 3, the Crawfordsville Square Entities admit that their claims against the Estate have been rendered "moot," and they proclaim that "if no relief is sought against a defendant, such defendants should be treated as a plaintiff." The purported jurisdictional grounds by which Crawfordsville Square could then purport to maintain the William Chaney Estate as a nominal defendant to ostensibly pursue an insurance recovery are not specified or even discernible.

In the first paragraph of the "Motion to Realign the Parties" the Crawfordsville Square Entities admit:

When Crawfordsville Square, LLC ("Crawfordsville Square") purchased the site in question from Ruth Chaney, Ruth Chaney agreed to assign to Crawfordsville Square all of her rights and causes of action in this matter and, in exchange, Crawfordsville Square agreed to release any claims it had against Ruth Chaney. Based on this agreement, the Probate Court has appointed Pete Cleveland Special Representative of the Estates of William R. and William R. Chaney.

The foregoing admissions coalesce as follows: (1) The Crawfordsville Square Entities can have no claim against the Estate of Ruth S. because they agreed to "release any claims [they] had against Ruth Chaney," but may proceed against entities other than the Estates as an assignee of Ruth Chaney, (2) there can be no claim against uninsured assets of the Estates and (3) no relief is being sought against either Chaney Estate. As to the William Chaney Estate this assertion is apparently consistent with claims the Crawfordsville Square Entities have made that

William Chaney's interests were inherited by Ruth and then assigned by her as part of the assignment.

This Court can only have jurisdiction over the Chaney Estates if the Crawfordsville Square Entities meet the requirements of I.C. 29-1-14-1(f). That exception to the limitation of actions against estates reads as follows:

Nothing in this section shall affect or prevent the enforcement of a claim for injury to person or damage to property arising out of negligence against the estate of a deceased tort feisor within the period of the statute of limitations provided for the tort action. A tort claim against the estate of the tort feisor may be opened or reopened and suit filed against the special representative of the estate within the period of the statute of limitations of the tort. Any recovery against the tort feisor's estate shall not affect any interest in the assets of the estate unless the suit was filed within the time allowed for filing claims against the estate. The rules of pleading and procedure in such cases shall be the same as apply in ordinary civil actions.

I.C. 29-1-14-1(f) (emphasis added) (hereinafter "Tort Claim Savings Statute").

Given the admissions contained in the "Motion to Realign the Parties" this Court should simply dismiss and close the Chaney Estates. Contrary to the representation in the "Motion to Realign Parties" they cannot be plaintiffs, because, as admitted by the Crawfordsville Square Entities, Ruth Chaney assigned any causes of action that she had prior to her death. They cannot be opened under I.C. 29-1-14-1(f) because, as admitted by Crawfordsville Square Entities, they are not negligent tort claim defendants against whom Crawfordsville Square purports to seek recovery to the extent of liability insurance. If the Crawfordsville Square Entities have claims against the Chaney's insurers under Ruth Chaney's assignment, the Crawfordsville Square Entities may litigate those claims themselves, as assignees, against any appropriate defendants. Estates are not necessary, or even appropriate under the pertinent law, for the Crawfordsville Square Entities to assert such claims.

In addition to serving judicial economy and economy among the litigating parties, closing the inappropriately opened Estates will resolve the conundrum created by the conduct of Peter Cleveland and the Ice Miller law firm in representing the Crawfordsville Square Entities as plaintiffs simultaneously with the Chaney Estates as defendants against whom Ice Miller has ostensibly asserted claims in the Circuit Court action. The risk of a collusive settlement, whereby the same lawyer representing the plaintiff would represent the defendant in granting the plaintiffs' demands, while seeking to maintain inappropriately opened Estates under the guise of pursuing insurance claims and also attempting to preclude a real party in interest from engaging independent counsel to assert appropriate liability defenses available to the defendant, would be eliminated. An order closing the Chaney Estates would be an appropriate step to assist counsel for the Crawfordsville Square Entities and Mr. Cleveland with purging themselves of the hopelessly conflicted roles which they are now attempting to play by representing the Chaney Estates. Any legitimate interests of the Crawfordsville Square Entities to assert claims would not be impaired by the closing of the Chaney Estates because, as plaintiffs, the Crawfordsville Square Entities would be free to assert whatever they contend Ruth Chaney's assignment gave them, against entities other than the Estates.

— This Court should, accordingly, simply close this Estate, discharge the Special Representative, and allow matters to proceed in the Circuit Court, where the "Motion to Realign Parties" will be responded to appropriately. The purported Chaney Estates, now shown to be opened under inappropriate grounds based upon the new positions taken in the "Motion to Realign Parties" must be closed. The Chaney Estates need play no further role in any litigation. Closing the Estates would have the added advantage of mooted the pending "Motion to Disqualify the Personal Representative and Counsel" filed on December 20, 2006, by the

undersigned defense counsel for the Chaney Estates provided at the expense of Hoosier Insurance Company. On the other hand, if the Estates are not closed for any reason, the fact remains that they must be represented by someone unaffiliated with the Crawfordsville Square plaintiffs.

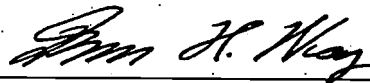
One final allegation deserves comment: In the "Notice of Filing" counsel for the Crawfordsville Square Entities/Chaney Estates alludes to "the conflict of interest created by Hoosier's reservation of rights." Given that counsel has conceded that "no relief" is being sought against either Chaney Estate, there can be no issue arising from any "reservation of rights" because there should be no liability claim against the Chaney Estates to be defended based on what counsel for the Crawfordsville Square entities now has to say about the situation. Absent an applicable statutory basis the Crawfordsville Square entities and their representatives are divested of their ability to open and maintain the Chaney Estates. In any event, a "reservation of rights" goes to insurance coverage issues. Undersigned counsel, acting purely as defense counsel for the Estates provided by an insurance carrier, has no role in any coverage dispute. The undersigned has been engaged by a liability insurer to defend against the purported liability claims made by the Crawfordsville Square entities against the Chaney Estates. That insurer is a real party in interest, not the Chaney Estates: The "Motion to Realign Parties" establishes this fact beyond all doubt. The "Motion to Realign Parties" simultaneously debunks the claim that insurance defense counsel retained to defend the purported "Estates" has any conflict arising from such representation. Thus, the attempt to impute a "conflict" to the undersigned defense counsel through the Parthian shot of that last sentence misses its mark.

Given the convoluted history of these proceedings, a hearing on this motion may help expedite resolution of the case. Insurance defense counsel for the "Estates" accordingly requests a hearing.

WHEREFORE, in light of the admissions made in the "Motion to Realign Parties" the Estate of William R. Chaney respectfully requests that the Estate be closed, the "Special Representative" be discharged, the previously filed "Petition to Remove Special Representative and His Counsel and Appoint Successor as Special Representative" be denied as moot, and for all other relief just and proper in the premises.

STEWART & IRWIN, P.C.

By:



Donn H. Wray (Attorney # 1643-49)

Attorneys retained by Hoosier Insurance  
Company to defend the interests of the  
Estate of William R. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 12<sup>th</sup> day of February, 2006:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leinneas Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319


Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
Donn H. Wray (Attorney #1643-49)

STATE OF INDIANA ) IN THE MONTGOMERY CIRCUIT COURT  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54C01-0508-PL-00331

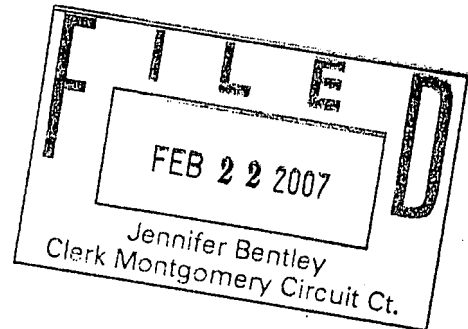
CRAWFORDSVILLE SQUARE, LLC and )  
CRAWFORDSVILLE SQUARE II, LLC, )

Plaintiffs, )

vs. )

ALLSTATE INSURANCE COMPANY, )  
HOOSIER INSURANCE COMPANY, )  
UNITED STATES FIDELITY & GUARANTY )  
INSURANCE COMPANY, LEINNEAUS )  
WHEELER, TAMARA YOUNT, RICK )  
BRIDWELL, THOMAS SHAVER, THE )  
ESTATE OF MARY L. SHAVER, THE )  
ESTATE OF J. NOEL SHAVER, and THE )  
ESTATES OF RUTH S. and WILLIAM R. )  
CHANEY, )

Defendants. )



**RESPONSE IN OPPOSITION TO "MOTION TO STRIKE AND  
MOTION TO DISQUALIFY STEWART & IRWIN, P.C."**

*"The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and the law itself."* Preamble, Rules of Professional Conduct, paragraph 14.

*"When the facts are against you argue the law. When the law is against you argue the facts. When both are against you give opposing counsel hell."* Old Lawyers' Proverb.

The "Estates of Ruth S. and William R. Chaney" acting by and through defense counsel provided to defend the Chaney Estates at the expense of Hoosier Insurance Company, and Stewart & Irwin, P.C., hereby respond to the "Motion to Strike and Motion to Disqualify Stewart & Irwin, P.C." (the "Motion"). The Motion is illogical in concept and disingenuous in execution. It raises serious issues as to the ability of the Ice Miller firm to continue with its purported representation of multiple parties in this case. The Motion should therefore be denied, and this Court must consider the ramifications arising from the conduct of Peter Cleveland, personal representative of the "Chaney Estates" and his counsel, Ice Miller.

## **I. INTRODUCTION**

Commencing on August 3, 2006 (approximately two months before either “Chaney Estate” was opened) plaintiffs, Crawfordsville Square, LLC and Crawfordsville Square II, LLC (the “Crawfordsville Square Entities”) purported to name the “Estates of Ruth S. and William R. Chaney” as defendants in their Third Amended Complaint. On October 2, 2006 the probate division of the Montgomery Superior Court entered orders opening the Estates and naming Peter Cleveland as Special Representative of each. On October 17, 2006, Brent Huber and Tonya Bond entered their appearance in this litigation on behalf of “the Estates of Ruth S. and W.R. Chaney.” A copy of that appearance form is attached as Exhibit “A.”

It is undisputed, and counsel for the Crawfordsville Square Entities/“Chaney Estates” have repeatedly admitted, that their “sole purpose” for opening the Estates was to pursue insurance proceeds under color of I.C. 29-1-14-1(f). It is undisputed that both Chaney had been dead for several years — well beyond the period of time allowing the assertion of any claim against each estate for any uninsured assets. Further, the Crawfordsville Square Entities admit that they released all claims against Ruth Chaney when they purchased the property and obtained an assignment from her as part of the deal.

On December 19, 2006 undersigned counsel, retained as defense counsel for the “Chaney Estates” by Hoosier Insurance Company, filed their appearance. The Ice Miller firm, representing both the plaintiff Crawfordsville Square Entities and the defendant “Chaney Estates” had failed to raise any defenses against the claims being made by the Crawfordsville Square Entities against the “Chaney Estates.” Because such substantive liability defenses are many and manifest, and had been utterly neglected by the counsel for the Crawfordsville Square Entities/“Chaney Estates”, on January 9, 2007 undersigned counsel filed a Motion for Summary Judgment raising some of the available liability defenses.

Counsel for the Crawfordsville Square Entities/"Chaney Estates" do not like the fact that a lawyer is asserting substantive liability defenses on behalf of the defendants they purport to represent, but from whom the plaintiffs they also represent desire to obtain money. Heedless of the conflict arising from their simultaneous representation of plaintiffs and defendants in the same litigation, counsel for the Crawfordsville Square Entities/"Chaney Estates" instead want this Court to disqualify undersigned defense counsel under the theory that we cannot act to defend the hitherto undefended Estates at the expense of a liability insurer from whom plaintiffs seek insurance proceeds.

Arguments now asserted by counsel for the Crawfordsville Square Entities/"Chaney Estates" are made more problematic by their recent "Motion to Realign the Parties" filed in this Court in which they seek to back off from the original alignment of parties they selected (naming the "Chaney Estates" as defendants) and attempt to re-cast the "Chaney Estates" as plaintiffs without filing an Amended Complaint. The logical fallacies and practical effect of that change in position are addressed in the "Notice of Filing in Probate Court and Response to 'Motion to Realign the Parties'" and will not be addressed in greater detail here. Yet in determining proper disposition of the Motion to Disqualify and Strike, the change in position made by the Ice Miller firm in the "Motion to Realign the Parties" must necessarily influence the Court's decision.

Instead of addressing the Summary Judgment Motion filed January 9, 2007 on its merits, counsel for the Crawfordsville Square Entities/"Chaney Estates" merely seek to strike it by means of the Motion. They fail to recognize that even should the Summary Judgment Motion as filed by undersigned counsel be struck (an improper disposition, we would urge) the vitality of the liability defenses contained therein continues undiminished. Under T. R. 56(B), when any party moves for summary judgment the Court may grant summary judgment for any other party upon issues raised by the motion. Thus, any pending or future Summary Judgment Motion

would allow this Court to give effect to the legal observations contained in the Summary Judgment Motion even if it is struck.

But the Summary Judgment Motion should not be struck. The Motion to Strike and Disqualify is nonsensical given the many admissions made by counsel for the Crawfordsville Square Entities/"Chaney Estates"; it establishes no impediment to the defense representation provided to the Estates by undersigned counsel, but instead places in bold relief the major ethical impairments marring the involvement of the Ice Miller firm and Peter Cleveland in this litigation. The Motion should accordingly be denied, the Estates' Summary Judgment Motion, to which no substantive response has been timely filed should be summarily granted, and this Court should consider the effect upon further proceedings that the conflicted conduct of counsel for the Crawfordsville Square Entities/"Chaney Estates" may have.

## **II. WHAT ARE THE "CHANEY ESTATES" AND WHOSE CLIENT ARE THEY?**

The gravamen of the Motion is that undersigned counsel have unethically proceeded to represent the "Chaney Estates" because Peter Cleveland, a corporate officer of the plaintiffs and the personal representative of the defendant "Chaney Estates" did not authorize the raising of liability defenses and did not want to see them raised. The Ice Miller firm also complains that undersigned counsel failed to "consult" with their "client" Peter Cleveland.

All of this begs the question as to who the "client" is. It is undisputed and admitted by counsel for the Crawfordsville Square Entities/"Chaney Estates" that there are no assets of the Estates, other than possible liability insurance that can be claimed by Crawfordsville Square Entities as plaintiffs. Hoosier, as one of the alleged liability insurers for the "Chaney Estates", is thus at risk by virtue of liability claims against the "Estates." In contrast, the "Estates" have no assets at risk. And now that the Ice Miller firm has filed the "Motion to Realign the Parties" there is not even a jurisdictional basis for allowing Mr. Cleveland to open the Estates because

that erstwhile Special Representative has apparently given up on his claim brought under color of I.C. 29-1-14-1(f) — the admitted “sole basis” for opening the Estates in the first place.

So if the “Estates” can have no assets at stake in the fight other than possible liability insurance coverage, who is the real party in interest? Our Supreme Court appears to have answered this question in Indiana Farmers Mutual Insurance Co. v. Richie, 707 N.E. 2d 992 (Ind. 1999). There, a cause of action was allowed to proceed under I.C. 29-1-14-1(f) for injuries resulting from an automobile accident. The time for claiming against uninsured assets of the estate had expired. In remarking upon the Richie decision shortly after it was handed down, the Court of Appeals stated:

Our Supreme Court has indicated that appointment of a special administrator is not necessary for a suit solely to collect proceeds of insurance under which the decedent was insured. Our Supreme Court has thereby created an exception to the provisions of the Probate Code and has, in effect, held that in certain situations a person injured by tort may file a suit directly against the insurer. This would appear to alter the longstanding law first expressed in Bennett v. Slater (1972), 154 Ind. App. 67, 289 N.E. 2d 144, that a party may not pursue a claim directly against the insurer based upon the actions of an insured.

Hosler v. Caterpillar, Inc., 710 N.E. 2d 193, Fn. 7, 197 (Ind. App. 1999).

Thus, even if the Crawfordsville Square Entities were still suing the “Chaney Estates” as defendants under color of I.C. 29-1-14-1(f) (which, in light of the “Motion to Realign the Parties” they are not) the Estates are not the real party in interest.

Yet Peter Cleveland, the Special Representative of the “Chaney Estates”, and a corporate officer of the Crawfordsville Square Entities, wants to “consult” with defense counsel retained by a real party in interest. This Special Representative has already breached his statutory duty to defend the Estates against claims as required by I.C. 29-1-14-11 as follows:

Before allowing or paying claims against the estate he represents, it shall be the duty of every personal representative to inquire into the correctness of all claims against the estate and make all

available defenses thereto, and if he fails so to do, he shall be liable on his bond, at the suit of any person interested in the estate, for all damages sustained by the estate in consequence of such neglect.

IC 29-1-14-11 (emphasis added).

Indeed, prior to undersigned counsel's filing of the Summary Judgment in this Court on January 9, 2007 the "Chaney Estates" were in technical default because no response to the Third Amended Complaint, or even a motion for extension of time to file a response, had been made on their behalf as defendants by the Ice Miller firm.

If the "Estates" really had a dog in the fight, as real parties in interest, perhaps the Ice Miller's firm invocation of Rules of Professional Conduct 1.2 and 1.4 would have a veneer of validity. Instead, the attempt to impute ethical shortcomings to the only lawyers who raised substantive defenses on behalf of the "Estates" to the claims being made against them by the Crawfordsville Square Entities is an illogical and cynical attempt to subvert the substantive rights of the real party in interest and to create an environment conducive to collusive agreements and actions (see infra at 13-14). "The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and the law itself." Rules of Professional Conduct, Preamble, paragraph 14. Common sense and basic law bar what counsel for the Crawfordsville Square Entities/"Chaney Estates" and the Special Representative are attempting to do here. For this reason alone the Motion must be denied.

**III. THERE CAN BE NO CONFLICT FOR DEFENSE COUNSEL  
PROVIDED BY AN INSURANCE CARRIER WHEN ONLY  
INSURANCE PROCEEDS ARE AT RISK**

The logical corollary of the preceding discussion is that there simply can be no conflict for insurance defense counsel if the only entity at risk of loss is the insurance carrier. At footnote 1 of the Motion, counsel for the Crawfordsville Square Entities/"Chaney Estates" cite themselves for the proposition that "a policy holder in the position of the Special Representative

has the right to select 'Cumis' counsel of his choice, at Hoosier's expense." There is no Indiana Law supporting this claim, because no case involves a situation where the defendant entity is not the real party in interest. Hosler, supra. What interest of an estate, incapable of legal existence without insurance proceeds and incapable of being held liable for anything other than an insured negligent tort claim, can possibly exist? Without any such interest independent of insurance proceeds for negligent tort liability, there is no subject for a "conflict" to involve. If there is no liability on the part of the estate there is no exposure for the insurance carrier, period. If there is no insurance coverage, there is no liability for the estate, period. Thus, there can be no conflict arising from undersigned's role as defense counsel.

On the other hand, if the Estate acts collusively through conflicted counsel representing the plaintiffs as well as the defendant Estate, a sham settlement whereby the Estate "agrees" that it is liable to plaintiff for a negligent tort could be crafted. This would prejudice the insurance carrier - real parties in interest. So again the conflict of the Crawfordsville Square Entities/"Chaney Estates" counsel arises, and this time illuminates that undersigned counsel can have no conflict in this scenario. <sup>1</sup>

---

<sup>1</sup> See Mid American Fire & Cas. Co. v. Shoney's 893 N.E. 2d 548 (Ind. App. 2006) at 551, fn. 3:

Apparently, pursuant to this statute [I.C. 13-23-13-8], after undertaking corrective action to remediate the contamination, Appellees sought a contribution from Hedrick's estate because Hedrick had owned the storage tanks at the time the release or releases occurred. At some point, the Estate agreed that it was liable to Appellees in the amount of \$500,000.00 and Appellees agreed to forego execution on the judgment, "except to the extent there is coverage to pay this judgment under Hedrick's policies of liability insurance, including the policy or policies of Mid-American." Appellant's App. At 716.

(Emphasis added).

Counsel to the Appellees included Brent Huber of Ice Miller. Id. at 549.

#### **IV. THE ICE MILLER FIRM AND PETER CLEVELAND ARE HOPELESSLY CONFLICTED**

Rule of Professional Conduct 1.7 provides:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

(emphasis added)

Here the Ice Miller firm seeks to represent simultaneously the Crawfordsville Square Entities (plaintiffs) and the "Chaney Estates" (defendants). More recently, perhaps mindful of the irreconcilable problems this entails, the same counsel who sued the "Chaney Estates" sought to make them plaintiffs by means of the "Motion to Realign the Parties."<sup>2</sup> As stated in the response to that Motion, such would necessitate the dismissal of the "Chaney Estates" as parties.

---

<sup>2</sup> Of course, the problem with this "realignment" is that it destroys the sole jurisdictional basis for opening the Estates in the first place (a suit against them as defendants seeking insurance coverage under I.C. 29-1-14-1(f)).

The Motion is grounded upon several statements that are just not true.

**A. The claim that “attorneys Brent W. Huber and Angela P. Krahulik of Ice Miller, LLP entered appearances...on behalf of the Chaney Estates and their Special Representative as cross-claim defendants only” is false.**

At rhetorical paragraph 4 of the Motion, Ice Miller attempts to excuse its conduct by claiming that it only appeared on behalf of the Chaney Estates as cross-claim defendants. Reference to Exhibit “A” shows this is simply not true. It is a general appearance. Further, even if a limited appearance on behalf of the “Chaney Estates” had been made, the Ice Miller firm failed in its duty to assure that the “Chaney Estates” had other defense counsel acting on their behalf to defend the suit brought against them by the Ice Miller firm in the form of the Third Amended Complaint.

The truth of the matter is that the convoluted, yet nonexistent, limited representation claimed is forbidden. R.P.C. 1.7 (b)(3) states that a conflict may only be waived if “the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.” (emphasis added) No matter how you slice it, by virtue of being named defendants by the Ice Miller firm the “Chaney Estates” were adverse to the Ice Miller firm’s other client, the Crawfordsville Square Entities, plaintiffs in the “same litigation or other proceeding before a tribunal.”

Further, even if it could be done, such a limited representation requires that “each affected client gives informed consent, confirmed in writing.” Despite filing correspondence between counsel that probably do not belong in a public record, conspicuous by its absence from Ice Miller’s filings is any written consent to this concurrent representation by either the Crawfordsville Square Entities or the “Chaney Estates.” Further, the acquisition of such “informed consent” from the “Chaney Estates” is problematic — who would be the proper person

to give such consent? Logic would dictate the entities with real interest at stake — the Estates' alleged liability insurance carriers.

The claim that Ice Miller represents the "Chaney Estates" "as cross-claim defendants only" is made of whole cloth. It is contrary to the face of Exhibit "A", their appearance. It is unworkable under the prohibitions of Rule 1.7, and no attempt has been shown to fit it under the limited exceptions that Rule might allow. This claim is a red herring that must be disregarded.

**B. Even if Ice Miller properly represents the "Chaney Estates" "as cross-claim defendants only" it was its own conduct that made them vulnerable to such cross-claims.**

The ethical ramifications do not end even if it would be proper for Ice Miller to represent the "Chaney Estates" "as cross-claim defendants only." That is because, until the "Chaney Estates" were sued as defendants by Ice Miller's clients Crawfordsville Square Entities, and conjured into existence by a corporate officer of the Crawfordsville Square Entities working with Ice Miller, they had no liability for anything. Once brought back to the land of the living and inserted into litigation, these Estates became cross-claim defendants from other parties. The Ice Miller firm and Peter Cleveland thus created, out of thin air, liability exposures for their own purported clients that otherwise would not exist. This ethical challenge was pointed out in undersigned counsel's letter of January 22, 2007 to Brent Huber (Exhibit "E" to the Motion) at the third paragraph on the first page of that letter.

**C. The claim in the Cleveland Affidavit that the Estates "need insurance coverage to satisfy their liability to IDEM and the alleged liability to the cross-claim defendants" is false.**

It is a misrepresentation to claim that the "Estates" have any liability to IDEM. IDEM has never made any claim upon the Estates. Significantly, there was no demand from IDEM to the Estates attached to the Cleveland affidavit in support of this false assertion. Peter Cleveland's unsubstantiated and false claim of an Estate liability to IDEM is hearsay. It describes an out-of-court assertion by IDEM submitted for the truth of the facts asserted therein

(i.e. that an IDEM claim, and resulting “liability”, exists against the “Estates”). It is not admissible and therefore cannot be considered in an affidavit seemingly filed to oppose a Summary Judgment Motion. Inadmissible hearsay cannot support or oppose a Summary Judgment Motion. J.M. Corp. v. Roberson, 749 N.E. 2d 567, 574 (Ind. App. 2001). Therefore, this statement must be struck from the Cleveland affidavit under well-settled summary judgment jurisprudence. Duncan v. Duncan, 764 N.E. 2d 763, 766 (Ind. App. 2002). Clearly, no IDEM demand supporting the claim of supposed liability has been properly designated under T.R. 56 and there is nothing for the Court to consider in this regard.

There is yet another reason why Cleveland’s claim of supposed Estate liabilities to IDEM must be struck from his affidavit: It is not an admissible statement of fact, but rather an inadmissible legal conclusion. Only “such facts as would be admissible in evidence” at trial may be considered in affidavits supporting or opposing summary judgment. T.R. 56(E); McCutchan v. Blanck, 846 N.E. 2d 256 (Ind. App. 2006). This legal conclusion (of the existence of Estate “liability” to IDEM) fails the admissibility test and must be struck and disregarded for this additional reason. Duncan, supra at 766. A party offering an affidavit into evidence bears the burden of establishing its admissibility. Id.

Even if there were such a claim, the “Estates” could have no liability to IDEM. If IDEM asserted such a claim, it would fail for the same reasons as advanced in the Estates’ Summary Judgment Motion filed by the undersigned. Specifically, only negligent tort claims brought within the tort statute of limitations may be asserted under the savings provision of I.C. 29-1-14-1(f). So for the very same reason the Crawfordsville Square Entities’ claims against the “Chaney Estates” must fail as a matter of substantive law, any claim by IDEM would meet the same fate.<sup>3</sup> The same goes for any allegations made by the cross-claim defendants against the Estates. Had

---

<sup>3</sup> Further, the alleged liability insurers would be the only real party in interest to respond to such a claim, acting through undersigned counsel.

Peter Cleveland carried out his duties pursuant to I.C. 29-1-14-11 to “make all available defenses” to liability claims against the estate, he would have known this. However, had he done so, he would have blocked the liability claims of his own corporations — the plaintiff Crawfordsville Square Entities. Mr. Cleveland, an attorney assisted by the Ice Miller firm, can be charged with knowledge of these circumstances and these breaches of duty.

**V. WHEN A PERSON, DURING LIFETIME, GIVES AN ASSIGNMENT OF RIGHTS AND RECEIVES A RELEASE OF ALL CLAIMS IN RETURN, IT IS INCOMPREHENSIBLE HOW THE RECIPIENT OF THAT ASSIGNMENT AND GRANTOR OF THAT RELEASE CAN BRING ANY CLAIM AGAINST THE ASSIGNOR/RELEASEE’S “ESTATE.”**

Another part of the Motion, and the arguments made by counsel to Crawfordsville Square Entities/”Chaney Estates” throughout, that begs comprehension is the claim that Ruth Chaney’s assignment creates a right in the Crawfordsville Square Entities to sue her Estate. In the Motion, Ice Miller states:

2. Crawfordsville Square’s Petition to Open the Chaney Estates and Mr. Cleveland’s appointment as the Special Representative of the Chaney Estates were based in large part upon a certain assignment from Ruth Chaney to Crawfordsville Square prior to Crawfordsville Square’s purchase of the property that is subject of this action. Absent this assignment, Crawfordsville Square would not have purchased the property. (Cleveland Aff., ¶ 4).

3. The sole purpose for which the Chaney Estates were opened and for which the Chaney Estates were named as defendants in this law suit was to allow Crawfordsville Square, as the Chaney’s contractual assignee, to collect insurance proceeds to which Ruth and William R. Chaney would have been entitled for the purpose of investigating and remediating contamination on the property formerly owned by the Chaney’s and currently owned by Crawfordsville Square. (Cleveland Aff., ¶¶ 5-6).

(Emphasis in original).

If the Crawfordsville Square Entities are the beneficiaries of an assignment, they may pursue whatever rights that assignment gave them. They do not need an “Estate” to do so. A person giving an assignment (and receiving a release in return) should not be sued by the

assignee once the assignment is given — the assignee has agreed to accept what the assignment gave him and leave the assignor alone (hence the release to Ruth Chaney). This analysis does not change once the assignor dies. The estate of the assignor has no greater or lesser a liability than the assignor would have had if alive. So it is logically inexplicable how or why a corporate officer of the Crawfordsville Square Entities and his counsel created and sued the Estates of the assignor.

Given these circumstances, the Estates were never needed. They appear to be sham parties.

**VI. COUNSEL TO THE CRAWFORDSVILLE SQUARE ENTITIES/"CHANEY ESTATES" AND THE PERSONAL REPRESENTATIVE DESIRE TO FOSTER AN ENVIRONMENT CONDUCIVE TO COLLUSIVE SETTLEMENTS/AGREEMENTS**

An obvious inference arising from the dogged conduct of the Ice Miller firm and Mr. Cleveland in maintaining this course in the litigation is that they desire to create a circumstance where a collusive settlement may be entered. The admissions in Mr. Cleveland's affidavit that "the Motion for Summary Judgment is contrary to my wishes as Special Representative and contrary to the interests of the Estates who need insurance coverage to satisfy their liability to IDEM and the alleged liability to cross-claim defendants" (Cleveland Affidavit at paragraph 9) tips their hand. First, the Motion for Summary Judgment does nothing to affect any insurance coverage available to the Estates. Indeed, the Motion (and undersigned counsel's role as defense counsel) assumes the existence of coverage. Second, Peter Cleveland, the personal representative statutorily charged with the obligation to "make all available defenses" against all claims made against the estate he represents, I.C. 29-1-14-11, failed to advance these defenses.

The logical question then must follow: Why would Mr. Cleveland, an attorney represented by well known counsel fail to raise such defenses? The answer is obvious: He is a corporate representative of the plaintiffs. Heedless of what befalls the Estates by virtue of that

first allegiance, Mr. Cleveland and his counsel want to avoid defending the “Estates” so that the real parties in interest — the alleged liability insurance carriers to the Estates — will have to pay.

**VII. IF THE MOTION IS DENIED, THE “MOTION OF DEFENDANTS, THE ‘ESTATES OF RUTH S. AND WILLIAM R. CHANEY’ FOR SUMMARY JUDGMENT PURSUANT TO T.R. 56” SHOULD BE SUMMARILY GRANTED AS UNOPPOSED**

T.R. 56(C) very specifically provides that: “An adverse party shall have thirty (30) days after service of the motion to serve a response and any opposing affidavits.” This time limit has been held to be mandatory and Courts do not have discretion to relieve a litigant from its mandate. Borsuk v. Town of St. John, 820 N.E. 2d 118, 124 (Ind. 2005); Desai v. Croy, 805 N.E. 2d 844, 848-49 (Ind. App. 2004).

Rather than responding to the Summary Judgment Motion filed by the undersigned January 9, 2007 on its merits, the Crawfordsville Square Entities have filed the Motion to Strike. They have not sought an extension of time to respond to the Summary Judgment Motion substantively. It therefore appears that, if the Motion to Strike the Summary Judgment Motion is denied, the Summary Judgment Motion should be summarily granted as unopposed.

Again, with reference to the discussion supra regarding the conflicted role of counsel for the Crawfordsville Square Entities/”Chaney Estates,” one may wonder why a substantive defense to the Motion was not filed. One plausible explanation is that such a substantive defense would highlight even more the impropriety of what has been attempted here.

**VIII. CONCLUSION**

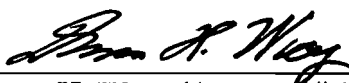
The Motion to Strike and Disqualify must be denied. Under the Rules for Professional Conduct, undersigned counsel as defense counsel to the Estates provided the only substantive liability defense given to those entities. They were owed such a defense by the “Special Representative” and his counsel, who failed to provide such defense and are conflicted due to their allegiances to the plaintiffs. In contrast, there can be no conflict when an attorney has been

engaged by a liability insurance carrier which is the sole entity with any exposure as a result of claims being made against the parties represented. In this case, the utter dearth of any defense being provided to those parties by those charged with a statutory duty to do so also makes clear the propriety of all actions by undersigned counsel.

There can be no basis for any claim against the "Chaney Estates" due to the admitted fact Ruth Chaney was released, in exchange for her assignment of rights to the Crawfordsville Square Entities. This Court should dismiss the Estates and thereby put an end to the potential of collusive settlements between plaintiffs and defendants represented by the same lawyers in the same case.

The Summary Judgment Motion filed January 9, 2007 by undersigned counsel on behalf of the "Chaney Estates" stands un rebutted and, if the Estates are not dismissed for the foregoing reasons, should be summarily granted as unopposed.

STEWART & IRWIN, P.C.

By:   
Donn H. Wray (Attorney # 1643-49)

Attorney for the Estates of Ruth S. and  
William R. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 22<sup>d</sup> day of February, 2007:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leinneaus Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319

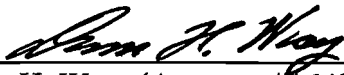
Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
Donn H. Wray (Attorney #1643-49)

**Montgomery County Circuit Court**  
**APPEARANCE FORM (CIVIL)**

Case Number: 54C01-0508-PL-331  
Crawfordsville Square v. Allstate Insurance Company, et al.

(File stamp)

// Check if Pro Se. **NOTE: This form is not required for pro se protective orders.**

1 The Estates of Ruth S. and W.R. Chaney

\_\_\_\_\_  
Telephone of *pro se* party

3. Attorney information (as applicable for service of process):

Brent W. Huber (#16077-53)  
ICE MILLER LLP  
One American Square, Suite 3100  
Indianapolis, IN 46282-0002  
(317) 236-2115 (phone)  
(317) 592-4721 (fax)

Tonya J. Bond (#24802-49A)  
ICE MILLER LLP  
One American Square, Suite 3100  
Indianapolis, IN 46282-0002  
(317) 236-2320 (phone)  
(317) 592-4260 (fax)

(Supply information for additional attorneys on continuation page.)

4. Case Type requested: \_\_\_\_\_ 5. Will accept FAX service: Yes \_\_\_\_ No X  
[See Administrative Rule 8(b)(3)]

6. Social Security numbers of all family members in proceedings involving support issues.

Name: _____	SS# _____	Name: _____	SS# _____
Name: _____	SS# _____	Name: _____	SS# _____
Name: _____	SS# _____	Name: _____	SS# _____

(Supply social security numbers for additional persons on continuation page.)

7. Are there related cases? Yes \_\_\_\_ No \_\_\_\_ If yes, list case and number below:

Caption: _____	Case Number: _____
Caption: _____	Case Number: _____

(Supply information for additional related cases on continuation page.)

8. Additional information required by state or local rule: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been deposited in the U.S. mail, first-class postage prepaid, on the 17<sup>th</sup> day of October 2006, addressed to:

Rex Henthorn  
HENTHORN, HARRIS & WELIEVER  
122 E. Main Street  
Crawfordsville, IN 47933  
Attorney for Leinncaus Wheeler

Paul S. Kruse  
PARR RICHEY OBREMSKEY &  
MORTON  
225 West Main Street  
Post Office Box 668  
Lebanon, IN 46052  
Attorney for Tom Shaver, Estate of Mary Shaver  
And Estate of J. Noel Shaver

Kenneth Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
Attorney for Tamara Yount and Allstate

Gregory P. Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
Attorney for Rick Bridwell and  
Allstate Insurance Company

Theodore Blanford  
HUME SMITH GEDDES GREEN &  
SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
Attorney for Hoosier Insurance Company

ICE MILLER LLP  
One American Square  
Suite 3100  
Indianapolis, Indiana 46282-0200  
(317) 236-2100

Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
Fourth Floor  
141 East Washington Street  
Indianapolis, IN 46204  
Attorney for United States Fidelity & Guaranty

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202-2415  
Attorney for Tamara Young, for her defense to Hoosier  
Insurance Company's Declaratory Judgment Claim only

Charles W. Browning  
Patrick Winters  
PLUNKETT & COONEY, P.C.  
38505 Woodward Avenue  
Suite 2000  
Bloomfield Hills, MI 48304  
Attorney for United States Fidelity & Guaranty

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
Attorney for United States Fidelity & Guaranty

---

Brent W. Huber, Attorney No. 16077-53

STATE OF INDIANA ) IN THE MONTGOMERY CIRCUIT COURT  
 ) SS:  
COUNTY OF MONTGOMERY ) CAUSE NO. 54C01-0508-PL-00331

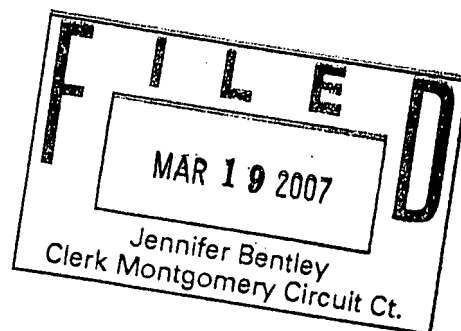
CRAWFORDSVILLE SQUARE, LLC and )  
CRAWFORDSVILLE SQUARE II, LLC, )

Plaintiffs, )

vs. )

ALLSTATE INSURANCE COMPANY, )  
HOOSIER INSURANCE COMPANY, )  
UNITED STATES FIDELITY & GUARANTY )  
INSURANCE COMPANY, LEINNEAUS )  
WHEELER, TAMARA YOUNT, RICK )  
BRIDWELL, THOMAS SHAVER, THE )  
ESTATE OF MARY L. SHAVER, THE )  
ESTATE OF J. NOEL SHAVER, and THE )  
ESTATES OF RUTH S. and WILLIAM R. )  
CHANEY, )

Defendants. )



**SUPPLEMENTATION AND CORRECTION TO "RESPONSE IN  
OPPOSITION TO 'MOTION TO STRIKE AND  
MOTION TO DISQUALIFY STEWART & IRWIN, P.C.'"**

The "Estates of Ruth S. and William R. Chaney" acting by and through defense counsel provided to defend the Chaney Estates at the expense of Hoosier Insurance Company, and Stewart & Irwin, P.C., hereby supplement and correct their "Response in Opposition to 'Motion to Strike and Motion to Disqualify Stewart & Irwin, P.C.'" (the "Response"). This is necessitated by a paper called to undersigned counsel's attention, for the first time, at a hearing held March 15, 2007 before the Montgomery Superior Court, Probate Division.

Specifically, an "Amended Appearance Form" filed on or about October 18, 2006 purporting to be an appearance of the Ice Miller firm through attorneys Huber and Bond on behalf of the Estates as "Cross-Claim Defendants" was tendered. It is attached as Exhibit "A" and hereafter will be referred to as the "Amended Appearance."


Although the Estates and Stewart & Irwin, P.C. wish to supplement and correct their submission to reflect the existence of this document, its existence changes nothing.

First, nowhere did the Ice Miller firm withdraw its prior appearance on behalf of the Chaney Estates apparently filed on or about October 17, 2006, which makes no reference to their role as "Cross-Claim Defendants." Second, the "Amended Appearance" does not state that it is an appearance for the Estates as "Cross-Claim Defendants only." Third, as set forth at pages 9-10 of the Response, R.P.C. 1.7(b)(3) prohibits simultaneous representation of both plaintiffs and defendants in the same proceeding in any capacity. The Ice Miller firm cannot sanitize its simultaneous representation of the Crawfordsville Square plaintiffs against the Chaney Estate defendants through the expedient of attempting to carve out representation of the Estates as cross-claim defendants. Doing so leaves them defenseless from the claims brought by the Ice Miller firm on behalf of its other clients, the plaintiffs. The unworkability of such a proposition is manifest merely by describing it. Fourth, even if R.P.C. 1.7(b)(3) did not prohibit the simultaneous representation, there still exists absolutely no showing or claim that "each affected client [gave] informed consent, confirmed in writing" as pointed out at page 9 of the Response.

If anything, the existence of the "Amended Appearance" shows that from the outset the Ice Miller firm has been mindful of the improprieties and complications inherent in what it has attempted to do with its representation in this case and has sought, however ineffectively, to avoid the unavoidable.

Undersigned counsel apologizes to the Court for incompletely describing the appearance situation surrounding Ice Miller's actions in this case and hereby clarifies and corrects its position with respect to this circumstance.

STEWART & IRWIN, P.C.

By:   
Donn H. Wray (Attorney # 1643-49)

Attorney for the Estates of Ruth S. and  
William R. Chaney, deceased

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 17<sup>th</sup> day of March, 2007:

Brent W. Huber  
Tonya J. Bond  
ICE MILLER  
One American Square, Suite 3100  
Box 82001  
Indianapolis, IN 46282  
*Attorney for Plaintiff*

C. Rex Henthorn  
HENTHORN, HARRIS & WHELIEVER  
122 East Main Street  
P.O. Box 645  
Crawfordsville, IN 47933  
*Attorney for Leineaus Wheeler*

Paul S. Kruse  
PARR RICHEY  
OBREMSKEY & MORTON  
225 West Main Street  
P.O. Box 668  
Lebanon, IN 46052  
*Attorney for Tom Shaver and  
The Estate of Mary Shaver*

Gregory Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
*Attorney for Rick Bridwell*

Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
*Attorney for Tamara Yount*

STEWART & IRWIN, P.C.  
251 East Ohio Street, Suite 1100  
Indianapolis, IN 46204  
Telephone: (317) 639-5454  
Facsimile: (317) 632-1319

Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
141 E. Washington Street, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
*Attorney for USF&G*

Charles W. Browning  
Patrick Winters  
38505 Woodward Avenue, Suite 2000  
Bloomfield Hills, MI 48304  
*Attorneys for USF&G*

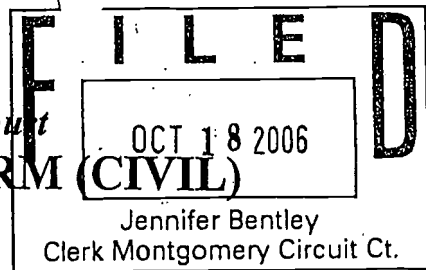
Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
*Attorney for USF&G*

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202  
*Attorneys for Tamara Yount as Counter-  
Defendant only*

Theodore J. Blanford  
HUME SMITH  
GEDDES GREEN & SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204-2996  
*Attorney for Hoosier Insurance Company*

  
\_\_\_\_\_  
Donn H. Wray (Attorney #1643-49)

Montgomery County Circuit Court  
AMENDED APPEARANCE FORM (CIVIL)



Case Number: 54C01-0508-PL-331  
Crawfordsville Square v. Allstate Insurance Company, et al.

(File stamp)

// Check if Pro Se. NOTE: This form is not required for pro se protective orders.

1 The Estates of Ruth S. and W.R. Chaney,  
Cross-Claim Defendants

Telephone of pro se party \_\_\_\_\_

3. Attorney information (as applicable for service of process):

Brent W. Huber (#16077-53)  
ICE MILLER LLP  
One American Square, Suite 3100  
Indianapolis, IN 46282-0002  
(317) 236-2115 (phone)  
(317) 592-4721 (fax)

Tonya J. Bond (#24802-49A)  
ICE MILLER LLP  
One American Square, Suite 3100  
Indianapolis, IN 46282-0002  
(317) 236-2320 (phone)  
(317) 592-4260 (fax)

(Supply information for additional attorneys on continuation page.)

4. Case Type requested: \_\_\_\_\_ 5. Will accept FAX service: Yes \_\_\_ No X  
[See Administrative Rule 8(b)(3)]

6. Social Security numbers of all family members in proceedings involving support issues.

Name: _____	SS# _____	Name: _____	SS# _____
Name: _____	SS# _____	Name: _____	SS# _____
Name: _____	SS# _____	Name: _____	SS# _____

(Supply social security numbers for additional persons on continuation page.)

7. Are there related cases? Yes \_\_\_ No \_\_\_ If yes, list case and number below:

Caption: _____	Case Number: _____
Caption: _____	Case Number: _____

(Supply information for additional related cases on continuation page.)

8. Additional information required by state or local rule: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been deposited in the U.S. mail, first-class postage prepaid, on the 18<sup>th</sup> day of October 2006, addressed to:

Rex Henthorn  
HENTHORN, HARRIS & WELIEVER  
122 E. Main Street  
Crawfordsville, IN 47933  
Attorney for Leinneaus Wheeler

Paul S. Kruse  
PARR RICHEY OBREMSKEY &  
MORTON  
225 West Main Street  
Post Office Box 668  
Lebanon, IN 46052  
Attorney for Tom Shaver, Estate of Mary Shaver  
And Estate of J. Noel Shaver

Kenneth Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240  
Attorney for Tamara Yount and Allstate

Gregory P. Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
Attorney for Rick Bridwell and  
Allstate Insurance Company

Theodore Blanford  
HUME SMITH GEDDES GREEN &  
SIMMONS, LLP  
54 Monument Circle, 4<sup>th</sup> Floor  
Indianapolis, IN 46204  
Attorney for Hoosier Insurance Company

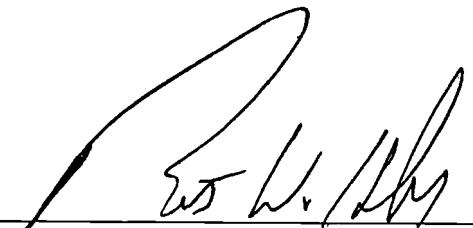
ICE MILLER LLP  
One American Square  
Suite 3100  
Indianapolis, Indiana 46282-0200  
(317) 236-2100

Bryce H. Bennett, Jr.  
Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
Fourth Floor  
141 East Washington Street  
Indianapolis, IN 46204  
Attorney for United States Fidelity & Guaranty

George M. Plews  
Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, IN 46202-2415  
Attorney for Tamara Young, for her defense to Hoosier  
Insurance Company's Declaratory Judgment Claim only

Charles W. Browning  
Patrick Winters  
PLUNKETT & COONEY, P.C.  
38505 Woodward Avenue  
Suite 2000  
Bloomfield Hills, MI 48304  
Attorney for United States Fidelity & Guaranty

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504  
Attorney for United States Fidelity & Guaranty

  
Brent W. Huber, Attorney No. 16077-53



# TRANSMITTAL COVER SHEET

DATE: March 12, 2007 14 PAGES (INCLUDING THIS PAGE)HARD COPY TO FOLLOW: Yes No ☒ VIA: N/A

TO:	COMPANY:	FAX NO.:	PHONE NO.:
Barb Lollar	Office of Legal Counsel	317/233-5517	317/233-5942

FROM: Brent W. Huber TELEPHONE NO.: (317) 236-5942

**WARNING  
CONFIDENTIALITY  
NOTICE:**

This cover sheet and the materials enclosed with this transmission are the private confidential property of the sender, and the materials are privileged communications intended solely for the receipt, use, benefit and information of the intended recipient indicated above. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, distribution, or the taking of any other action in reliance on the contents of this transmission is strictly prohibited, and may result in legal liability on your part. If you have received this transmission in error, please notify us immediately at the telephone number below and arrange for return of this transmission to us.

CLIENT/MATTER NO. 23258.0001JOB CODE (Fax Center Use Only): 1265

For questions or problems in transmission, please contact our Fax Operators at: (317) 236-2352  
One American Square | Box 82001 | Indianapolis, IN 46282-0002 | (317) 236-2100 | FAX (317) 236-2219

**ASSIGNMENT OF LEASE**  
**and**  
**WAIVER OF PURCHASE OPTION**

THIS ASSIGNMENT OF LEASE AND WAIVER OF PURCHASE OPTION (the "Assignment and Waiver") is made this \_\_\_\_ day of \_\_\_\_\_, 1999, by and among RUTH S. CHANEY, an Individual ("Assignor" and "Lessor"); CRAWFORDSVILLE SQUARE, L.L.C., an Indiana limited liability company ("Assignee"); and JOHN C. WILL and TAMARA L. WILL, husband and wife ("Lessee").

**RECITALS**

A. William Ray Chaney and Ruth S. Chaney, as Lessor, entered into that certain Real Estate Lease, dated August 30, 1996 (the "Lease"), with John C. Will and Tamara L. Will, husband and wife (the "Lessee"), whereby Assignor leased to Lessee certain real property commonly known as 203 East South Boulevard, Crawfordsville, Montgomery County, Indiana, and more particularly described as follows:

Part of the northwest quarter of section eight (8), township eighteen (18) north, range four (4) west, bounded and described as follows to-wit:

Beginning at a point fifty (50) feet south and twenty and twenty-eight thousandths (20.028) chains east of the northwest corner of said northwest quarter section; township and range aforesaid; thence south one hundred and eighty (180) feet; thence east ninety (90) feet; thence north one hundred eighty (180) feet; thence west ninety (90) feet to the place of beginning.

All in Montgomery County, Indiana.

(the "Leased Premises").

B. William Ray Chaney died on the 27 day of OCT, 1999 and, at the time of his death and endorsement of this Lease Ruth S. Chaney was his wife.

C. Assignor has agreed to assign all of its right, title and interest in and to the Lease to Assignee.

D. Assignee has agreed to accept the assignment of all Assignor's right, title and interest in and to the Lease.

E. Assignor owns additional real estate adjoining the Leased Premises to the east which is commonly known as 201 East South Boulevard, Crawfordsville, Montgomery County, Indiana (the "Adjoining Real Estate").

F:\PROJECTS\CSLLC\Chaney\LEASE.ASS

F. Lessee has acknowledged that Lessor owns the Adjoining Real Estate and the Leased Premises (collectively the "Chaney Real Estate").

G. Lessee has a right of First Refusal Option to Purchase, all as set forth in paragraph 12 of the Lease.

H. Lessee has agreed to waive the Lessee's First Refusal Option to Purchase.

**AGREEMENT FOR ASSIGNMENT OF LEASE**

NOW, THEREFORE, in consideration of the mutual covenants, conditions, provisions and agreements contained herein, Assignor hereby agrees as follows:

1. Assignor does hereby assign to Assignee, effective as of the date hereof, all of his right, title and interest in and to the Lease upon the same covenants, terms, conditions and provisions as are contained therein.

2. Assignee does hereby accept the assignment of all Assignor's right, title and interest in and to the Contract and do hereby assume Assignor's obligations thereunder.

3. Assignor hereby represents and warrants to Assignee that Assignor has not heretofore assigned, conveyed, sold or granted any interest in the Lease and that the Lease is in full force and effect and neither party is in default thereunder.

4. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Lease as of the day and year first written above.

ASSIGNOR

\_\_\_\_\_  
Ruth S. Chaney

ASSIGNEE

CRAWFORDSVILLE SQUARE, LLC

By  \_\_\_\_\_

Donald J. Tharp, Managing Member

The undersigned, being the Lessee under the Lease, do hereby consent and agree to the foregoing Assignment of Lease.

Dated: \_\_\_\_\_, 1999

LESSEE

\_\_\_\_\_  
John C. Will

\_\_\_\_\_  
Tamara L. Will

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment of Lease as of the day and year first written above.

ASSIGNOR

Ruth S. Chaney  
Ruth S. Chaney

ASSIGNEE

CRAWFORDSVILLE SQUARE, LLC

By: \_\_\_\_\_  
Donald J. Tharp, Managing Member

The undersigned, being the Lessee under the Lease, do hereby consent and agree to the foregoing Assignment of Lease.

Dated: February 4th, 1999

LESSEE

John C. Will  
John C. Will

Tamara L. Will  
Tamara L. Will

**AGREEMENT FOR WAIVER OF PURCHASE OPTION**

NOW, THEREFORE, in consideration of the mutual conditions, provisions and agreements contained herein, Lessee hereby agrees as follows:

1. John C. Will and Tamara L. Will, as Lessee, hereby acknowledge to Crawfordsville Square, L.L.C., as Purchaser, that the Lessee has the option of exercising a first refusal option to the purchase of the Chaney Real Estate pursuant to paragraph 12 of the Lease; and, the Lessee has waived and refused to exercise the First Refusal Option to Purchase effective as of the date hereof.

IN WITNESS WHEREOF, Lessee has executed this Waiver of Purchase Option as of the day and year first written above.

**LESSEE**

\_\_\_\_\_  
John C. Will

\_\_\_\_\_  
Tamara L. Will

**PURCHASER**

**CRAWFORDSVILLE SQUARE, LLC**

By 

Donald J. Sharp, Managing Member

The undersigned, being the Lessor under the Lease, does hereby consent and agree to the foregoing Waiver of Purchase Option:

Dated: \_\_\_\_\_, 1999.

**LESSOR**

\_\_\_\_\_  
Ruth S. Chaney

JAN-29-99 FRI 10:12 AM TRI COUNTY BANK

FAX NO. 7855220517

P. 02

## REAL ESTATE LEASE

THIS AGREEMENT, made and entered into by and between William Ray Chaney and Ruth S. Chaney (hereinafter called Lessor(s)), and John C. Will and Tamara L. Will, husband and wife, (hereinafter called Lessee(s)), WITNESSETH:

### 1. LEASED PREMISES

LESSOR, in consideration of the rents and covenants herein contained, does hereby lease to LESSEE the real estate, with improvements thereon, which is known as 203 South Boulevard, Crawfordsville, Indiana, which is more particularly described as follows:

Part of the northwest quarter of section eight (8), township eighteen (18) north, range four (4) west, bounded and described as follows, to-wit: Beginning at a point fifty (50) feet south and twenty and twenty-eight thousandths (20.028) chains east of the northwest corner of said northwest quarter section; township and range aforesaid; thence south one hundred and eighty (180) feet; thence east ninety (90) feet; thence north one hundred eighty (180) feet; thence west ninety (90) feet to the place of beginning.

All in Montgomery County, Indiana.

### 2. RENT AND TERM

The Lessor hereby leases this real estate for a term of three (3) years beginning on the 9th day of September, 1996, and ending on the 9th day of September, 1999, and in consideration therefore Lessee does agree to pay rental in the amount of \$28,800.00 payable in installments of \$800.00 per month, the first payment being due and payable on the 1st day of September, 1996, and a like sum on the 1st day of each month thereafter during the term of this lease with the final installment being due on August 1, 1999, with interest at the rate of 18% per annum upon each installment after the same becomes due, and with attorney fees in the event of default. All sums due from Lessee hereunder shall be payable without relief from valuation or appraisal laws at such places as Lessor may designate in writing.

### 3. LESSEE ACCEPTS PREMISES

Lessee has examined said premises prior to and as a condition precedent to this acceptance and the execution hereof, and is satisfied with the physical condition thereof, and his taking possession thereof shall be conclusive evidence of his receipt thereof in good order and repair, except as otherwise specified hereon, and agrees and admits that no representation as to the condition or repair thereof has been made by Lessor or his agent which is not expressed or endorsed hereon, and Lessee likewise agrees and admits that no agreement or promise to repair or improve said premises, either before or after the execution hereof, not contained herein, has been made by Lessor or his agent. No holding over by Lessee hereunder shall constitute a renewal or extension of the terms of this lease except upon written consent of Lessor.

### 4. LESSEE TO MAINTAIN PREMISES

Lessee shall keep the said premises in a clean, slightly and healthful condition, and in good repair, except as hereinafter provided under "Covenants of Lessor", all at his own expense, and shall yield the same back to Lessor upon termination of the said lease, whether such termination shall occur by expiration of the term hereof or in any other manner whatsoever, in the same condition of cleanliness, repair and sightliness as at the date of the

JAN-29-99 FRI 10:13 AM TRI COUNTY BANK

FAX NO. 7655220517

P. 03

execution hereof, loss by fire or by the elements, and reasonable wear and tear excepted. If, however, the said premises shall not thus be kept in good repair and in a clean, sightly and healthful condition by Lessee, as aforesaid, Lessor may enter the same, himself or by his agents, servants or employees, without such entering causing or constituting a termination of this lease or an interference with the possession of the premises by Lessee, and Lessor may replace the same, in the same condition of repair, sightliness, healthfulness and cleanliness as existed at the date of execution hereof, and Lessee agrees to pay Lessor, in addition to the rent hereby reserved, the expenses of Lessor in thus replacing the premises in that condition. Lessee shall not permit any waste or misuse of the premises.

#### 5. FURTHER COVENANTS OF LESSEE

Lessee does further covenant and agree that he will pay all bills and charges for water, sewage, gas, electric current, and heating costs, which may be assessed or charged against the occupant of said premises during said term or any extension thereof; that he will not use or occupy said premises for any unlawful purpose; that he will not use or permit the leased premises to be used in violation of any law, order or regulation of any governmental authority relating to the use or occupancy of said premises; that if any use by Lessee of the leased premises increases the insurance rates thereon, Lessee will pay to Lessor the amount of increases in premium caused by such increase in rates; that he will make no alterations or additions in or to said premises without the written consent of said Lessor; that he will permit said Lessor, or his agents, to enter upon said premises at all reasonable times, to examine the condition thereof. Lessee may not assign this lease or sublease the premises without the prior consent of Lessor, and further provide however, that no assignment or subletting shall relieve Lessee of his obligations under this lease.

#### 6. COVENANTS OF LESSOR

Lessor, for himself, and for his heirs and assigns, hereby covenants and agrees with Lessee that said Lessee, paying the rents, and keeping and performing the covenants of this lease on his part to be kept and performed, shall peaceably and quietly hold, occupy and enjoy said premises during said term, without any hindrance or molestation by Lessor or any person or persons lawfully claiming under him, and Lessor shall pay all taxes and assessments levied against the leased premises; Lessor further agrees to keep all exterior portions of the said premises, including foundations, walls and roof, in good repair and order and Lessor shall have access to said premises at any reasonable time to make said repairs; provided, however, that Lessor shall not be liable to Lessee for any damage or injury to Lessee or to his property, or to third persons or to the property of third persons occasioned by the failure of Lessor to keep said premises in repair, all claims for any such damages being hereby expressly waived by Lessee; and provided further, the Lessor covenants and warrants that the leased premises may lawfully be used by Lessee for the purpose for which they are leased.

#### 7. REMEDIES OF LESSOR

If said rent, or any part thereof, shall at any time be in arrears and unpaid, and without any demand being made therefor; or if said Lessee, or his assigns, shall fail to keep and perform any of the covenants, agreements or conditions of this lease, on his part to be kept and performed, and such default is not cured within 30 days after written notice from Lessor setting forth the nature of such default; or if said Lessee shall be adjudged a bankrupt, or shall make an assignment for the benefit of creditors, or if the interest of said Lessee hereunder shall be sold under execution or other legal process, or if Lessee shall file a voluntary petition

JAN-29-99 FRI 10:13 AM TRI COUNTY BANK

FAX NO. 7655220517

P. 04

in bankruptcy, or shall be placed in the hands of a receiver, it shall be lawful for Lessor, his heirs or assigns without notice or process of law, to enter into said premises, and again have, repossess and enjoy the same as if this lease had not been made, and thereupon this lease and everything herein contained on the part of said Lessor to be done and performed shall cease, terminate and be utterly void, all at the election of Lessor; without prejudice, however, to the right of the Lessor to recover from said Lessee, or assigns, all rent due up to the time of such entry. In case of any such default and entry by Lessor, Lessor may relet said premises for the remainder of said term for the highest rent obtainable and may recover from Lessee any deficiency between the amount so obtained, and the rent hereinabove reserved. Failure on the part of Lessor to avail himself of any right or remedy hereunder shall not constitute a waiver thereof as to any future default or breach by Lessee, his heirs and assigns.

#### 8. REMEDIES OF LESSEE

In the event of any breach of this lease, or any covenant thereof, by the Lessor, the Lessee shall have all of the rights and remedies provided for by Indiana law. In addition, the Lessee shall have the right to collect from the Lessor any and all attorneys fees, court costs and other costs of litigation which the Lessee incurs as a result of such breach.

#### 9. RISK OF LOSS

In case any building on said premises, or any substantial part of said premises, without any fault or neglect of either party, shall be destroyed or so injured by the elements, or other cause, as to be unfit for occupancy, then this lease may be cancelled or terminated by either party at their election. Lessor shall not be obligated to carry fire and windstorm insurance on the building, but Lessee shall be solely responsible for insuring his personal property stored on the premises, and for obtaining business interruption insurance, if desired. Lessee agrees at all times to carry comprehensive general liability insurance, listing Lessor as additional insured and providing certificate of insurance with limits of not less than \$500,000 for bodily injury and \$500,000 property damage.

#### 10. LESSOR MAY MORTGAGE PREMISES

The Lessor may at any time mortgage the demised premises, or any part thereof, and this lease shall be subordinate to the lien of any such mortgage; and Lessee agrees to execute any documents which may be required by any lending institution for the purpose of such a subordination.

#### 11. FIRST OPTION TO RENEW

Lessee shall have a first option to renew this lease for up to three successive one-year terms following expiration of the initial three-year term. Lessee may exercise his option by delivering written notice of intention to renew to the Lessor, not less than 60 days prior to the expiration of the initial three-year term or any one-year renewal term. Upon receipt of such written notice, Lessor shall propose in writing a new rental amount to Lessee for the renewal term. Lessee shall have fourteen days from the receipt of such written rent proposal within which to accept or reject it in writing. If Lessee accepts such rent proposal, this lease shall be renewed for a one-year term upon the same terms and conditions as are set forth herein, except that the amount of rent shall be that set forth in Lessor's proposal. If Lessee does not timely give written notice of intention to exercise his option, or if he rejects or fails to timely accept Lessor's rent proposal, then in any of such events, this lease shall terminate upon the

JAN-29-98 FRI 10:14 AM TRI COUNTY BANK

FAX NO. 7855220517

P. 05

expiration of the then-current term, without the necessity of any further notice of any kind. In no event, however, shall Lessee be entitled to more than three one-year renewals, nor shall Lessor be obligated to renew the lease if Lessee is in breach of his obligations hereunder at the expiration of any term.

## 12. FIRST REFUSAL OPTION TO PURCHASE

Lessor agrees that he will not sell the leased premises, or any part thereof, without first offering the same to Lessee upon the same terms and conditions as may be offered to or by any third party. Lessee shall have fourteen days from receipt of written notice of such an offer within which to accept or reject it in writing. If Lessee rejects or fails to timely accept such offer, Lessor may sell the leased premises, or any part, to such third party upon such terms, subject only to Lessee's leasehold rights under this lease. Lessee acknowledges that Lessor owns additional real estate adjoining the leased premises on the east, and agrees that if Lessor offers to sell or receives an offer to purchase the leased premises, or part thereof, together with all or part of the adjoining real estate, Lessee's first refusal option may be exercised only as to the entire parcel which Lessor has offered for sale or upon which he has received an offer to purchase.

## 13. NOTICES

Any notice to be given under this lease shall be made in person or by certified mail to Lessor at 38540 Camden Avenue, Zephyrhills, Florida 33540, and to Lessee at 203 South Boulevard, Crawfordsville, Indiana, or to such other address as may be given by either party in writing, in person or by certified mail. Notice, if made by certified mail, shall be deemed given on the date of postmark.

This lease, and the covenants herein contained, shall extend to and be binding upon the heirs, executors and assigns of the parties to this lease. Whenever necessary to a proper construction to this agreement, the singular shall be deemed to include the plural, and the masculine shall be deemed to include the feminine or neuter, and vice versa. If this instrument is executed in duplicate counterparts, each shall be deemed an original.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 30 day of August, 1996.

LESSEES:

John C. Will (SEAL)  
John C. Will

Tamara L. Will (SEAL)  
Tamara L. Will

LESSOR:

William Ray Chaney (SEAL)  
William Ray Chaney

Ruth S. Chaney (SEAL)  
Ruth S. Chaney

REAL ESTATE LEASE

THIS AGREEMENT, made and entered into by and between William May Chaney (hereinafter called Lessor), and Richard D & Carla L Bridwell (hereinafter called Lessee), WITNESSETH:

LESSOR, in consideration of the rents and covenants herein contained, does hereby lease to LESSEE the following described real estate in the County of Montgomery and State of Indiana, to-wit:

Part of the northwest quarter of section eight (8), township eighteen (18) north, range four (4) west, bounded and described as follows, to-wit: Beginning at a point fifty (50) feet south and twenty and twenty-eight thousandths (20.028) chains east of the northwest corner of said northwest quarter section; township and range aforesaid; thence south one hundred and eighty (180) feet; thence east ninety (90) feet; thence north one hundred eighty (180) feet; thence west ninety (90) feet to the place of beginning.

to have and to hold unto said Lessee for a term of three years beginning on the 9th day of May, 1994, and ending on the 9th day of May, 1997, and in consideration therefore Lessee does agree to pay rental in the amount of \$28,800.00 payable in installments of \$800.00 per month, the first payment being due and payable on the 1st day of May, 1994, and a like sum on the 1st day of each month thereafter during the term of this lease with the final installment being due on May 1st, 1997, with interest at the rate of 18% per annum upon each installment after the same becomes due, and with attorney fees in the event of default. All sums due from Lessee hereunder shall be payable without relief from valuation or appraisal laws at Clements-Roscher Corporation, East Main Street, City of Crawfordville, State of Indiana, or at such other place as Lessor may designate in writing.

LESSEE ACCEPTS PREMISES

Lessee has examined said premises prior to and as a condition precedent to this acceptance and the execution hereof, and is satisfied with the physical condition thereof, and his taking possession thereof shall be conclusive evidence of his receipt thereof in good order and repair, except as otherwise specified hereon, and agrees and admits that no representation as to the condition or repair thereof has been made by Lessor or his agent which is not expressed or endorsed hereon, and Lessee likewise agrees and admits that no agreement or promise to repair or improve said premises, either before or after the execution hereof, not contained herein, has been made by Lessor or his agent. No holding over by Lessee hereunder shall constitute a renewal or extension of the terms of this lease except upon written consent of Lessor.

LESSEE TO MAINTAIN PREMISES

Lessee shall keep the said premises in a clean, sightly and healthful condition, and in good repair, except as hereinafter provided under "Covenants of Lessor", all at his own expense, and shall yield the same back to Lessor upon termination of the said lease, whether such termination shall occur by expiration of the term hereof or in any other manner whatsoever, in the same condition of cleanliness, repair and sightliness as at the date of the execution hereof, loss by fire or by the elements, and reasonable wear and tear excepted. If, however, the said premises shall not thus be kept in good repair and in a clean, sightly and healthful condition by Lessee, as aforesaid, Lessor may enter the same, himself or by his agents, servants or employees, without such entering causing or constituting a termination of this lease or an interference with the possession of the premises by Lessee, and Lessor may replace the same, in the same condition of repair, sightliness,

BR0001

healthfulness and cleanliness as existed at the date of execution hereof, and Lessee agrees to pay Lessor, in addition to the rent hereby reserved, the expenses of Lessor in thus replacing the premises in that condition. Lessee shall not permit any waste or misuse of the premises.

#### FURTHER COVENANTS OF LESSEE

Lessee does further covenant and agree that he will pay all bills and charges for water, sewage, gas, electric current, and heating costs, which may be assessed or charged against the occupant of said premises during said term or any extension thereof; that he will not use or occupy said premises for any unlawful purpose; that he will not use or permit the leased premises to be used in violation of any law, order or regulation of any governmental authority relating to the use or occupancy of said premises; that if any use by Lessee of the leased premises increased the insurance rates thereon, Lessee will pay to Lessor the amount of increases in premium caused by such increases in rates; that he will make no alterations or additions in or to said premises without the written consent of said Lessor; that he will permit said Lessor, or his agents, to enter upon said premises at all reasonable times, to examine the condition thereof; Lessee may not assign this lease or sublease the premises without the prior consent of Lessor, and further provide however, that no assignment or subletting shall relieve Lessee of his obligations under this lease.

#### COVENANTS OF LESSOR

Lessor, for himself, and for his heirs and assigns, hereby covenants and agrees with Lessee that said Lessee, paying the rents, and keeping and performing the covenants of this lease on his part to be kept and performed, shall peaceably and quietly hold, occupy and enjoy said premises during said term, without any hindrance or molestation by Lessor or any person or persons lawfully claiming under him, and Lessor shall pay all real estate taxes and assessments levied against the leased premises; Lessor further agrees to keep all exterior portions of the said premises, including foundations, walls and roof, in good repair and order and Lessor shall have access to said premises at any reasonable time to make said repairs; provided, however, that Lessor shall not be liable to Lessee for any damage or injury to Lessee or to his property, or to third persons or to the property of third persons occasioned by the failure of Lessor to keep said premises in repair, all claims for any such damages being hereby expressly waived by Lessee; and provided further, the Lessor covenants and warrants that the leased premises may lawfully be used by Lessee for the purpose for which they are leased.

#### REMEDIES OF LESSOR

If said rent, or any part thereof, shall at any time be in arrears and unpaid, and without any demand being made therefor; or if said Lessee, or his assigns, shall fail to keep and perform any of the covenants, agreements or conditions of this lease, on his part to be kept and performed, and such default is not cured within 30 days after written notice from Lessor setting forth the nature of such default; or if said Lessee shall be adjudged a bankrupt, or shall make an assignment for the benefit of creditors, or if the interest of said Lessee hereunder shall be sold under execution or other legal process, or if Lessee shall file a voluntary petition in bankruptcy, or shall be placed in the hands of a receiver, it shall be lawful for Lessor, his heirs or assigns without notice or process of law, to enter into said premises, and again have, possess and enjoy the same as if this lease had not been made, and thereupon this lease and everything herein contained on the part of said Lessor to be done and performed shall cease, terminate and be utterly void, all at the election of Lessor; without prejudice, however, to the right of the Lessor to recover from said Lessee, or assigns, all rent due up to the time of such entry. In case of any such default and entry by Lessor, Lessor may relet said premises for the remainder of said term for the highest rent obtainable and may recover from Lessee any deficiency between the amount so obtained, and

BR0002

the rent hereinabove reserved. Failure on the part of Lessor to avail himself of any right or remedy hereunder shall not constitute a waiver thereof as to any future default or breach by Lessee, his heirs and assigns.

#### RISK OF LOSS

In case any building on said premises, or any substantial part of said premises, without any fault or neglect of either party, shall be destroyed or so injured by the elements, or other cause, as to be unfit for occupancy, then this lease may be cancelled or terminated by either party at their election. Lessor shall not be obligated to carry fire and windstorm insurance on the building, but Lessee shall be solely responsible for insuring his personal property stored on the premises, and for obtaining business interruption insurance, if desired. Lessee agrees at all times to carry comprehensive general liability insurance, listing Lessor as additional insured and providing certificate of insurance with limits of not less than \$500,000 for bodily injury and \$500,000 property damage.

#### LESSOR MAY MORTGAGE PREMISES

The Lessor may at any time mortgage the demised premises, or any part thereof, and this lease shall be subordinate to the lien of any such mortgage; and Lessee agrees to execute any documents which may be required by any lending institution for the purpose of such a subordination.

#### FIRST OPTION TO RENEW

Lessee shall have a first option to renew this lease for up to three successive one-year terms following expiration of the initial three-year term. Lessee may exercise his option by delivering written notice of intention to renew to Clements-Roscher Corporation, as agent of Lessor, not less than 60 days prior to the expiration of the initial three-year term or any one-year renewal term. Upon receipt of such written notice, Lessor shall propose in writing a new rental amount to Lessee for the renewal term. Lessee shall have fourteen days from the receipt of such written rent proposal within which to accept or reject it in writing. If Lessee accepts such rent proposal, this lease shall be renewed for a one-year term upon the same terms and conditions as are set forth herein, except that the amount of rent shall be that set forth in Lessor's proposal. If Lessee does not timely give written notice of intention to exercise his option, or if he rejects or fails to timely accept Lessor's rent proposal, then in any of such events, this lease shall terminate upon the expiration of the then-current term, without the necessity of any further notice of any kind. In no event, however, shall Lessee be entitled to more than three one-year renewals, nor shall Lessor be obligated to renew the lease if Lessee is in breach of his obligations hereunder at the expiration of any term.

#### FIRST REFUSAL OPTION TO PURCHASE

Lessor agrees that he will not sell the leased premises, or any part thereof, without first offering the same to Lessee upon the same terms and conditions as may be offered to or by any third party. Lessee shall have fourteen days from receipt of written notice of such an offer within which to accept or reject it in writing. If Lessee rejects or fails to timely accept such offer, Lessor may sell the leased premises, or any part, to such third party upon such terms, subject only to Lessee's leasehold rights under this lease. Lessee acknowledges that Lessor owns additional real estate adjoining the leased premises on the east, and agrees that if Lessor offers to sell or receives an offer to purchase the leased premises, or part thereof, together with all or part of the adjoining real estate, Lessee's first refusal option may be exercised only as to the entire parcel which Lessor has offered for sale or upon which he has received an offer to purchase.

BR0003

## NOTICES

Any notice to be given under this lease shall be made in person or by certified mail to Lessor at Clements-Roscher Corporation, 119 East Main, Crawfordsville, Indiana, and to Lessee at 203 S Blvd Crawfordsville, Indiana, or to such other address as may be given by either party in writing, in person or by certified mail. Notice, if made by certified mail, shall be deemed given on the date of postmark.

This lease, and the covenants herein contained, shall extend to and be binding upon the heirs, executors and assigns of the parties to this lease. Whenever necessary to a proper construction to this agreement, the singular shall be deemed to include the plural, and the masculine shall be deemed to include the feminine or neuter, and vice versa. If this instrument is executed in duplicate counterparts, each shall be deemed an original.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals this 9th day of May, 1994.

Richard D. Bridwell (SEAL)  
Lessee  
Richard D. Bridwell

William Ray Chaney (SEAL)  
Lessor  
William Ray Chaney

Carla L. Bridwell (SEAL)  
Lessee  
Carla L. Bridwell

STATE OF INDIANA )  
COUNTY OF MONTGOMERY ) SS:

Before me a Notary Public in and for said County and State, on this 9th day of May, 1994, personally appeared William Ray Chaney, Lessor and acknowledged the execution of the above and foregoing Lease to be his voluntary act and deed.

WITNESS my hand and Notarial Seal.

John G. Collier  
Notary Public  
Residing in Montgomery County, IN

My Commission Expires:

11/17/97

STATE OF INDIANA )  
COUNTY OF MONTGOMERY ) SS:

Before me a Notary Public in and for said County and State, on this 9th day of May, 1994, personally appeared Richard D. Bridwell and Carla L. Bridwell, Lessee and acknowledged the execution of the above and foregoing Lease to be his voluntary act and deed.

WITNESS my hand and Notarial Seal.

John G. Collier  
Notary Public  
Residing in Montgomery County, IN

My Commission Expires:

11/17/97

BR0004

MAY 16 1994

TRANSACTION REPORT

P. 01

JUL-06-2007 FRI 02:58 PM

FOR:

Crawfordsville C/bs.

Site # 2005.06.216

SEND

General Correspondence

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
JUL-06	02:57 PM	84720993	25"	1	FAX TX	OK	380	

TOTAL : 25S PAGES: 1

**AEE** Astbury  
Environmental  
Engineering, Inc.

5645 WEST 7TH STREET INDIANAPOLIS, INDIANA 46278 • 317-472-0999 • FAX 317-472-0993

RECEIVED  
JUL 05 9 08 AM  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

July 5, 2007

Letter of Transmittal

Indiana Department of Environmental Management  
100 N. Senate Ave. 11<sup>th</sup> Floor Room 1101  
Indianapolis, IN

Attn: Dawn Groves Nilia Moberly Green  
I, the undersigned, acknowledge receipt of the following:

Further Site Investigation (3copies +1 CD) Fmr Blvd Cleaners Crawfordsville, IN IDEM Incident #2005-06-216 AEE 186.05		

After signing to confirm receipt, please fax this transmittal to AEE at (317) 472-0993.

*Nilia Moberly Green*

Signature

Date 07/06/2007

*Nilia Moberly Green*

Name (Printed)

aeeldemtransmittal

RECEIVED

JUL 05 2007  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

July 5, 2007

**Letter of Transmittal**

Indiana Department of Environmental Management

100 N. Senate Ave. 11<sup>th</sup> Floor Room 1101

Indianapolis, IN

Attn: ~~Dawn Groves~~ *Nilia Moberly Green*

I, the undersigned, acknowledge receipt of the following:

Further Site Investigation (3copies +1 CD) Fmr Blvd Cleaners Crawfordsville, IN IDEM Incident #2005-06-216 AEE 186.05		

After signing to confirm receipt, please fax this transmittal to AEE at (317) 472-0993.

*Nilia Moberly Green*

Signature

*Nilia Moberly Green*

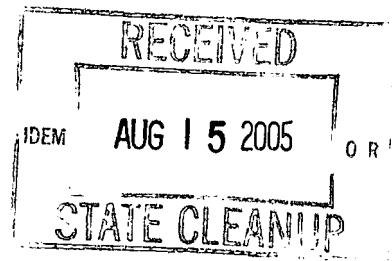
Name (Printed)

ace\idemtransmittal

Date *07/06/2007*

August 9, 2005

Indiana Department of Environmental Management  
State Cleanup Section  
100 North Senate Avenue  
Indianapolis, Indiana 46204  
Attn: Ms. Anne DaVega



RE: Crawfordsville II, LLC  
203 East South Boulevard  
Crawfordsville, Indiana 47933  
Site #2005-06-216

Dear Ms. Da Vega:

Astbury Environmental Engineering, Inc. (AEE) is acting as the project manager for this site for Crawfordsville II, LLC. The project site is the former Boulevard Cleaners property located at 203 East South Boulevard in Crawfordsville, Indiana (the "Site"). The purpose of this letter is to request a 30-day extension for the submittal of the Initial Site Characterization (ISC) Report due to the efforts to obtain complete delineation of the groundwater contaminant plume prior to submittal of the report as we discussed during our phone call on June 27, 2005. We now have the data in hand showing that both the soil and groundwater contaminant plumes are fully delineated and are in the process of compiling the data and preparing the report.

Please contact me as soon as possible if you have any questions regarding this matter.

Sincerely,

Don H. Neeley, LPG, CHMM  
Senior Project Manager

DHN:dhm

cc: Peter Cleveland, Crawfordsville II, LLC

**Contacts for Former Boulevard Cleaners**  
**203 East South Boulevard**  
**Crawfordsville, Montgomery County**  
**Site # 2005-06-216**

Crawfordsville Clrs.  
Site # 2005-06-216  
Not For Public View

**Site owner:**

Peter Cleveland  
Crawfordsville Square LLC  
Crawfordsville Square II, LLC  
6910 N. Shadeland Ave., Suite 200  
Indianapolis, IN 46220  
Phone: 317/890-1714 Ext. 1011

**Attorney for Crawfordsville Square LLC,  
Crawfordsville Square II LLC and Special  
Administer for the Chaney Estates  
for a Limited Purpose:**

Brent Huber  
Ice Miller LLP  
One American Square  
Suite 3100  
Indianapolis, IN 46282-0200  
Phone: 317/236-5942  
Fax: 317/592-4822  
Email: Brent.Huber@icemiller.com

**Consultant for Crawfordsville Square:**

Don Neeley  
Astbury Environmental Engineering, Inc.  
5645 west 79<sup>th</sup> Street  
Indianapolis, IN 46278  
Phone: 317/472-0999  
Fax: 317/472-0993  
Email: dneeeley@aceindy.com

**Attorney for Rick Bridwell and Allstate  
Insurance:**

Gregory P. Cafouros  
Andrew R. Falk  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204

**Attorney for Linnaeus Wheeler:**

Rex Henthorn  
HENTHORN, HARRIS & WELIEVER  
122 E. Main Street  
Crawfordsville, IN 47933

**Attorney for Tom Shaver and the Shaver  
Estates:**

Paul S. Kruse  
PARR RICHEY OBREMSKEY & MORTON  
225 West Main Street  
Post Office Box 668  
Lebanon, IN 46052

**Attorney for Tamara Yount:**

Kenneth Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, IN 46240

**Attorney for Hoosier Insurance Company:**

Theodore Blanford  
HUME SMITH GEDDES GREEN & SIMMONS,  
LLP  
54 Monument Circle  
Fourth Floor  
Indianapolis, IN 46204  
Phone: 317/632-4402

**Attorney for Unites States Fidelity & Guaranty:**

Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge N.W., Suite 530  
Grand Rapids, MI 49504

**MOBERLY GREEN, NILIA**

---

**From:** Neeley, Don [dneeley@aeeindy.com]  
**Sent:** Wednesday, November 21, 2007 11:11 AM  
**To:** MOBERLY GREEN, NILIA  
**Subject:** Former Boulevard Cleaners, Crawfordsville, IN State Cleanup #2005-06-216

Nilia,

We have had three (3) additional field mobilizations for this project and now are preparing an FSI II. I believe the due date to respond to your most recent letter is November 26, 2007, but would like to request a 30-day extension at this time. I hope to have the report to you in a few weeks at most.

As just a quick overview, we have completed the soil delineation, but there are two (2) groundwater issues remaining. This may be partially due to the off-site access allowing us to be only 30 feet downgradient of the previous monitoring well in the shallow soils. Additionally, there is some slight (11 ppb) dissolved PCE impact in the deep sand as you will see. This will also require delineation.

Sincerely,

**Don H. Neeley**

Don H. Neeley  
Astbury Environmental Engineering, Inc.  
5645 West 79th Street  
Indianapolis, IN 46278  
317-472-0999 Fx: 317-472-0993  
[dneeley@aeeindy.com](mailto:dneeley@aeeindy.com)

12/7/2007

**MOBERLY GREEN, NILIA**

---

**From:** Neeley, Don [dneeley@aeindy.com]  
**Sent:** Wednesday, October 03, 2007 3:55 PM  
**To:** MOBERLY GREEN, NILIA  
**Cc:** Nichols, Fred  
**Subject:** Former Boulevard Cleaners (2005-06-216)

Nilia,

I have been trying to reach you by phone to discuss well locations for the upcoming field work. We are trying to move promptly forward with this work and are scheduled to begin drilling on Monday October 8. Your letter of September 27, 2007 cites additional wells SW of MW-9, east of MW-17, and somewhere outside of MW-5 (I suggest to the NE). This would be three (3) additional shallow wells. However, the text goes on to suggest, "At least five shallow groundwater monitoring wells are needed to complete the delineation of the PCE groundwater contaminant plume in the northeast, east, and southwest directions." I believe that only the three (3) specifically noted additional shallow wells are needed.

Honestly, I think it would be reasonable to use MW-5 as a limiting well since the PCE concentration of 6.6 ppb is only marginally higher than the RDCL of 5.0 ppb. At worst, it seems we could at least wait and sample the well one more time and see if there is a trend (the initial conc was 12 ppb on June 13, 2005 and recent was 6.6 ppb on May 24, 2007). Perhaps this well could be used as a perimeter well and an additional well is not needed in this direction.

Secondly, we are going to be installing three (3) wells into an underlying sand unit that has a top at around 30 feet. We discovered this unit during additional boring trying to complete the vertical delineation in September. We plan to double-case the well in the area of AB-24 where the highest deep PCE concentration (30,000 ppb) was encountered at 26-27.5 feet. This is the most obvious location to install a deep well since the high PCE concentration near the top of the sand suggests the greatest likelihood of PCE entering the sand in this area. This is in comparison with the shallow source area where clean soils were observed at 18-20 feet (AB-25, AB-26, AB-27). Additionally, we have already obtained soil samples in the sand from two (2) borings that show PCE in it in this area (near AB-24) at concentrations well above the IDCL of 640 ppb. We plan to install the other two (2) deep wells in areas where shallow soils are not known to be impacted.

Please either phone me or contact me as soon as possible to discuss this.

Sincerely,

**Don H. Neeley**

Don H. Neeley  
Astbury Environmental Engineering, Inc.  
5645 West 79th Street  
Indianapolis, IN 46278  
317-472-0999 Fx: 317-472-0993  
[dneeley@aeindy.com](mailto:dneeley@aeindy.com)

10/4/2007

**MOBERLY GREEN, NILIA**

**From:** Neeley, Don [dneeley@aeindy.com]  
**Sent:** Wednesday, October 03, 2007 3:55 PM  
**To:** MOBERLY GREEN, NILIA  
**Cc:** Nichols, Fred  
**Subject:** Former Boulevard Cleaners (2005-06-216)

Nilia,

I have been trying to reach you by phone to discuss well locations for the upcoming field work. We are trying to move promptly forward with this work and are scheduled to begin drilling on Monday October 8. Your letter of September 27, 2007 cites additional wells SW of MW-9, east of MW-17, and somewhere outside of MW-5 (I suggest to the NE). This would be three (3) additional shallow wells. However, the text goes on to suggest, "At least five shallow groundwater monitoring wells are needed to complete the delineation of the PCE groundwater contaminant plume in the northeast, east, and southwest directions." I believe that only the three (3) specifically noted additional shallow wells are needed.

Honestly, I think it would be reasonable to use MW-5 as a limiting well since the PCE concentration of 6.6 ppb is only marginally higher than the RDCL of 5.0 ppb. At worst, it seems we could at least wait and sample the well one more time and see if there is a trend (the initial conc was 12 ppb on June 13, 2005 and recent was 6.6 ppb on May 24, 2007). Perhaps this well could be used as a perimeter well and an additional well is not needed in this direction.

Secondly, we are going to be installing three (3) wells into an underlying sand unit that has a top at around 30 feet. We discovered this unit during additional boring trying to complete the vertical delineation in September. We plan to double-case the well in the area of AB-24 where the highest deep PCE concentration (30,000 ppb) was encountered at 26-27.5 feet. This is the most obvious location to install a deep well since the high PCE concentration near the top of the sand suggests the greatest likelihood of PCE entering the sand in this area. This is in comparison with the shallow source area where clean soils were observed at 18-20 feet (AB-25, AB-26, AB-27). Additionally, we have already obtained soil samples in the sand from two (2) borings that show PCE in it in this area (near AB-24) at concentrations well above the IDCL of 640 ppb. We plan to install the other two (2) deep wells in areas where shallow soils are not known to be impacted.

Please either phone me or contact me as soon as possible to discuss this.

Sincerely,

**Don H. Neeley**

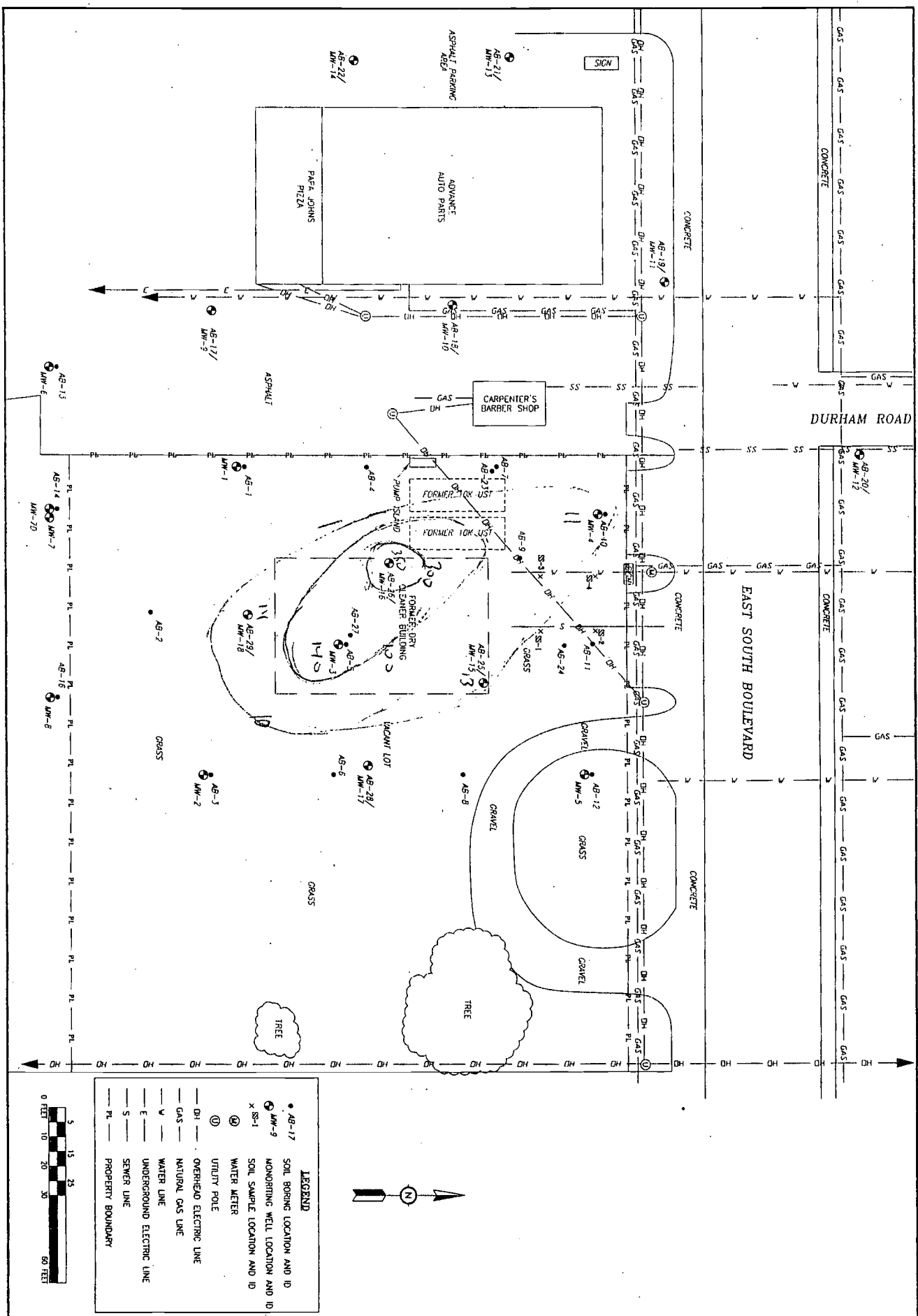
Don H. Neeley  
 Astbury Environmental Engineering, Inc.  
 5645 West 79th Street  
 Indianapolis, IN 46278  
 317-472-0999 Fx: 317-472-0993  
[dneeley@aeindy.com](mailto:dneeley@aeindy.com)

4 boring near 24  
 24A  
 24B - 25

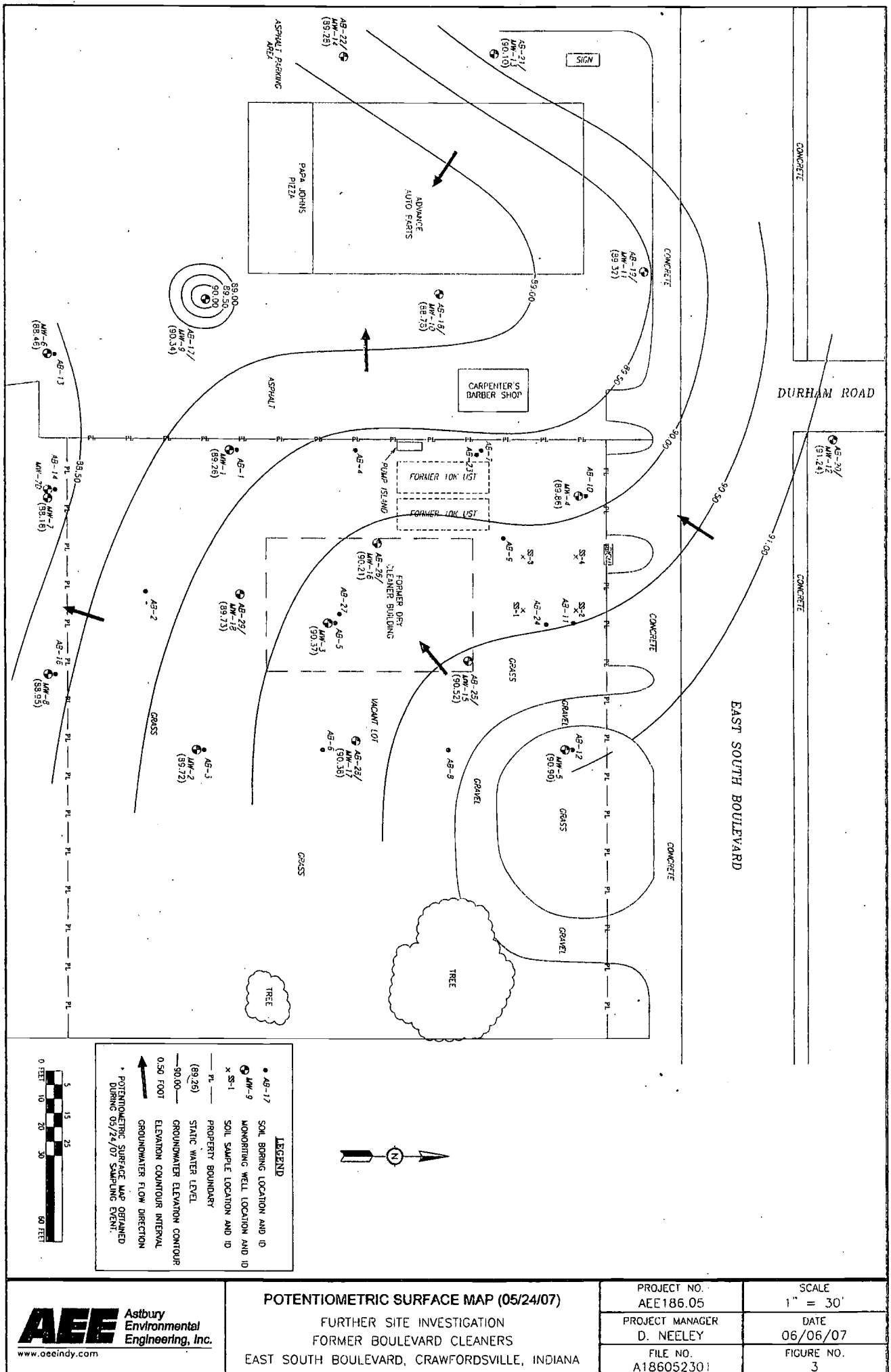
Sand at 30' gone down to 35'  
 ~20-40' sand

down to base of sand  
 screen across

10/4/2007

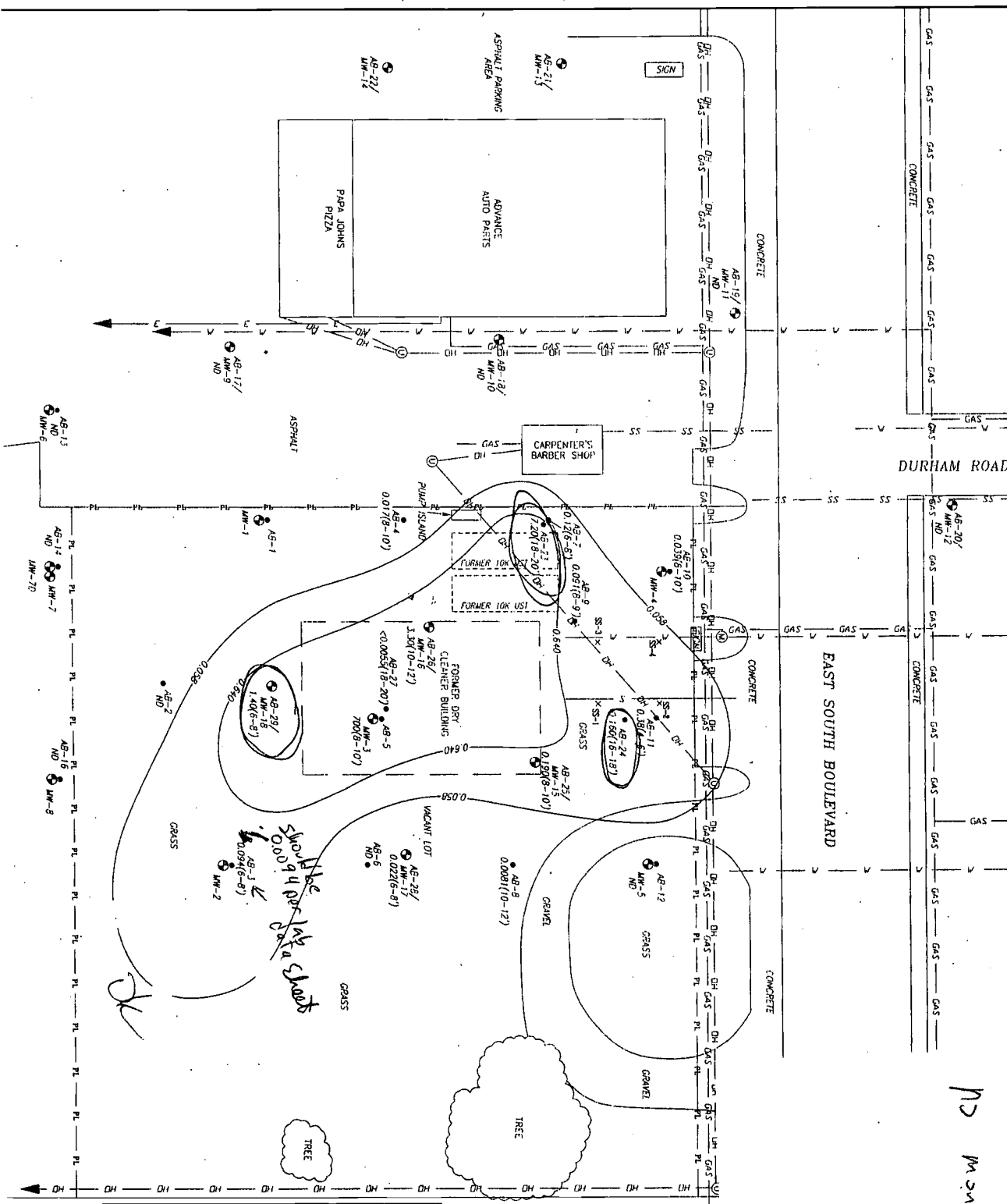


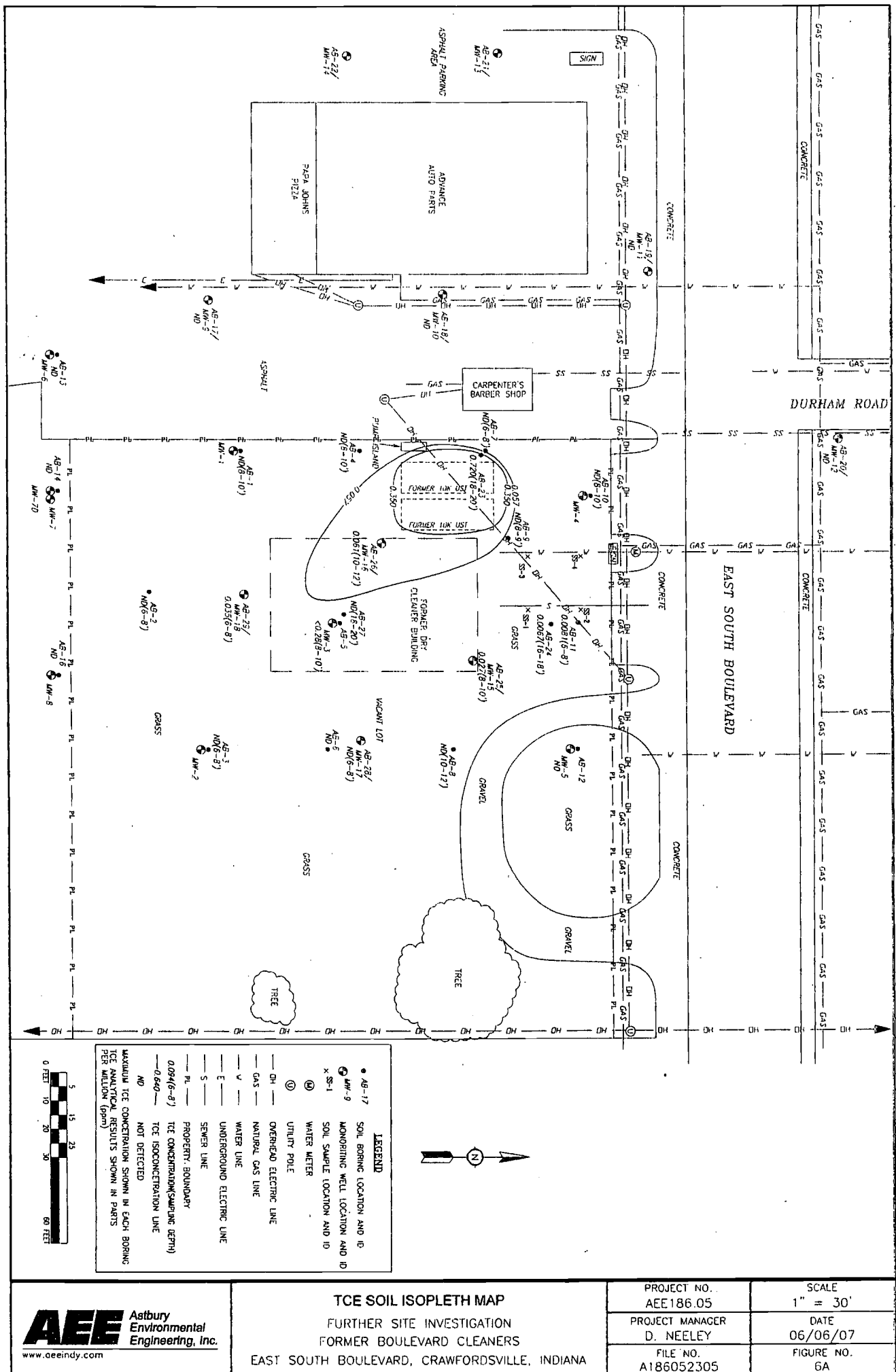
ICE Groundwater



PCE to SE not  
delimited

no mention of grade





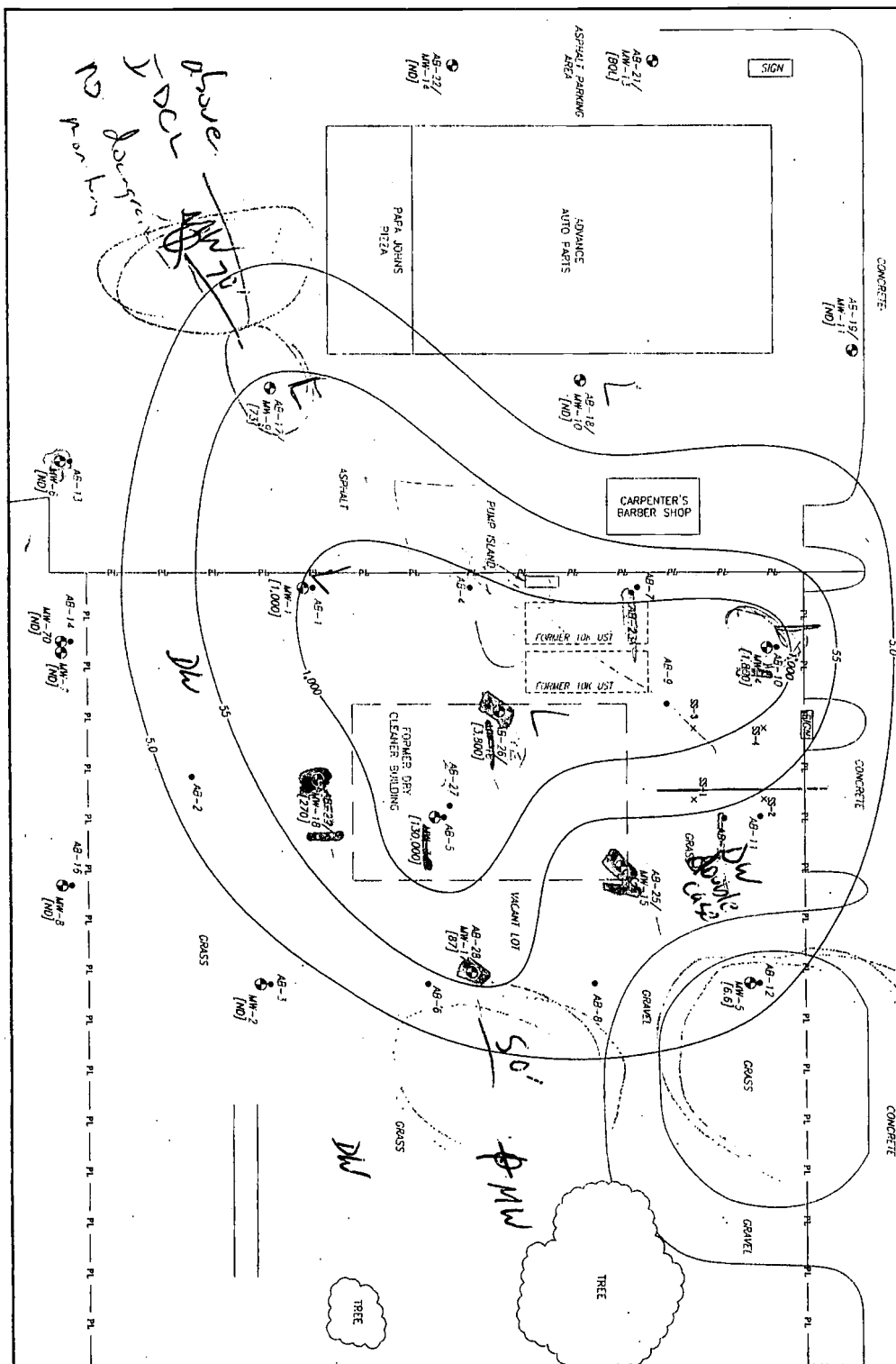
CONCRETE

DURHAM ROAD

CONCRETE

EAST SOUTH BOULEVARD

*Site not marked*



ISC well  
FSI well

Soil vertical incomplete

ICE above IDCL  
TIG above RNC

**LEGEND**

- AB-17 SOIL BORING LOCATION AND ID
- MW-9 MONITORING WELL LOCATION AND ID
- SS-1 SOIL SAMPLE LOCATION AND ID
- PL — PROPERTY BOUNDARY
- (1.800) — PCE CONCENTRATION
- NO NOT DETECTED AT QUANTIFICATION LIMIT OF 5.0 ppb
- BCL BELOW QUANTIFICATION LIMIT OF 5.0 ppb

PCE ANALYTICAL RESULTS OBTAINED DURING 05/24/07 & 05/30/07 SAMPLING EVENTS, SHOWN IN PARTS PER BILLION (ppb)



**AEE** Astbury Environmental Engineering, Inc.  
www.aeeindy.com

**GROUNDWATER PCE ISOPLETH MAP**  
FURTHER SITE INVESTIGATION  
FORMER BOULEVARD CLEANERS  
EAST SOUTH BOULEVARD, CRAWFORDSVILLE, INDIANA

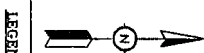
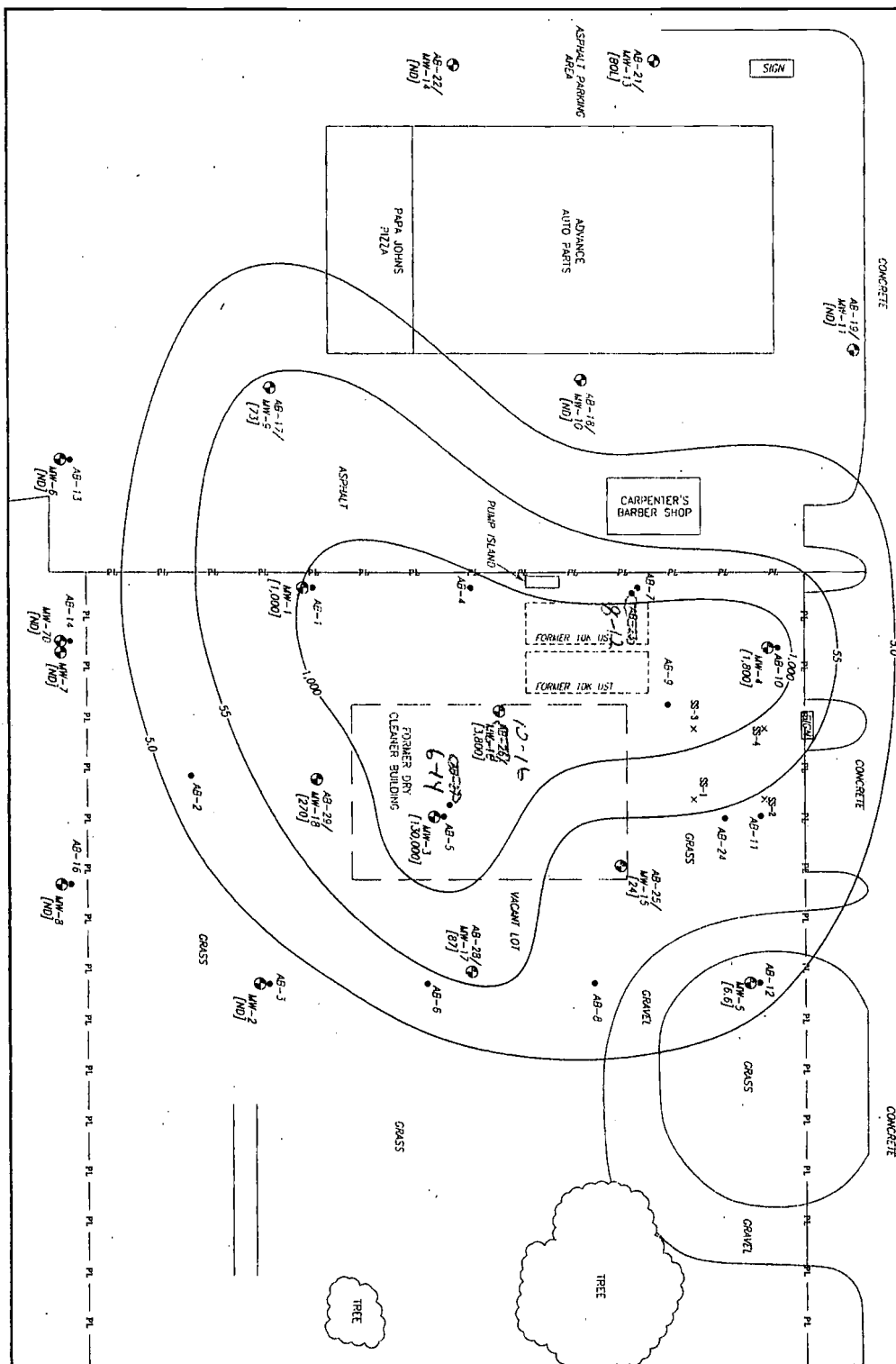
PROJECT NO. AEE186.05	SCALE 1" = 30'
PROJECT MANAGER D. NEELEY	DATE 06/06/07
FILE NO. A186052307	FIGURE NO. 7

CONCRETE

DURHAM ROAD

CONCRETE

EAST SOUTH BOULEVARD



LEGEND

- AS-17 SOIL BORING LOCATION AND ID
- LM-9 MONITORING WELL LOCATION AND ID
- x SS-1 SOIL SAMPLE LOCATION AND ID
- PL — PROPERTY BOUNDARY
- [1,800] PCE CONCENTRATION
- NO NOT DETECTED AT QUANTIFICATION LIMIT OF 5.0 PPB
- BDL BELOW QUANTIFICATION LIMIT OF 5.0 PPB
- PCE ANALYTICAL RESULTS OBTAINED DURING 05/24/07 & 05/30/07 SAMPLING EVENTS: SHOWN IN PARTS PER BILLION (PPB)



**AEE** Astbury  
Environmental  
Engineering, Inc.  
www.aeeindy.com

GROUNDWATER PCE ISOPLETH MAP  
FURTHER SITE INVESTIGATION  
FORMER BOULEVARD CLEANERS  
EAST SOUTH BOULEVARD, CRAWFORDSVILLE, INDIANA

PROJECT NO.  
AEE186.05  
PROJECT MANAGER  
D. NEELEY  
FILE NO.  
A186052307

SCALE  
1" = 30'  
DATE  
06/06/07  
FIGURE NO.  
7

Fluorescence

**ANNE DAVEGA - RE: Crawfordsville drlg**

---

**From:** "Neeley, Don" <dneeley@aceindy.com>  
**To:** "ANNE DAVEGA" <ADAVEGA@idem.in.gov>  
**Date:** 7/8/2005 10:09 AM  
**Subject:** RE: Crawfordsville drlg

---

Anne,

We completed four (4) additional off-site borings Weds July 6 and completed each as a 2.0-inch ID MW. None of the PID readings in the new borings exceeded 7.5 ppmv. We will be sampling the wells and surveying today. I hope to have an ISC ready for you within the required timeframe.

Sincerely,

**Don H. Neeley**

Don H. Neeley, LPG, CHMM  
Astbury Environmental Engineering, Inc.  
5645 West 79th Street  
Indianapolis, IN 46278  
317-472-0999 ext. 204 Fax 317-472-0993  
[dneeley@aceindy.com](mailto:dneeley@aceindy.com)

-----Original Message-----

**From:** ANNE DAVEGA [mailto:ADAVEGA@idem.in.gov]  
**Sent:** Wednesday, June 29, 2005 10:21 AM  
**To:** Neeley, Don  
**Subject:** Re: Crawfordsville drlg

Great, thanks for the heads up.

Anne M. DaVega  
Project Manager  
State Cleanup Section  
Phone: 317/ 234-0978  
Fax: 317/ 234-0428

>>> "Neeley, Don" <dneeley@aceindy.com> 06/29/05 09:16AM >>>

Anne,

We have received authorization from the client to continuously sample and install additional monitoring wells at the site on July 6th (a week from today). If you can be there you'll be able to see what we have so far.

Sincerely,

**Don H. Neeley**

Don H. Neeley, LPG, CHMM  
Astbury Environmental Engineering, Inc.  
5645 West 79th Street

Indianapolis, IN 46278  
317-472-0999 ext. 204 Fax 317-472-0993  
[dneeley@aeeindy.com](mailto:dneeley@aeeindy.com)

-----Original Message-----

**From:** ANNE DAVEGA [mailto:[ADAVEGA@idem.in.gov](mailto:ADAVEGA@idem.in.gov)]  
**Sent:** Monday, June 27, 2005 4:21 PM  
**To:** Neeley, Don  
**Subject:** Re: test

Yes, I received this.

Thanks

>>> "Neeley, Don" <[dneeley@aeeindy.com](mailto:dneeley@aeeindy.com)> 06/27/05 02:59PM >>>  
Anne,

Here is a test e-mail to see if the old address still works. The new one is [adavega@idem.in.gov](mailto:adavega@idem.in.gov).

Thanks,

**Don H. Neeley**

Don H. Neeley, LPG, CHMM  
Astbury Environmental Engineering, Inc.  
5645 West 79th Street  
Indianapolis, IN 46278  
317-472-0999 ext. 204 Fax 317-472-0993  
[dneeley@aeeindy.com](mailto:dneeley@aeeindy.com)



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live.*

Mitchell E. Daniels, Jr.  
Governor

Thomas W. Easterly  
Commissioner

*Crawfordsville Cleaners*  
Site # 2005-06-216  
General Correspondence

100 North Senate Avenue  
Indianapolis, Indiana 46204  
(317) 232-8603  
(800) 451-6027  
www.IN.gov/idem

January 13, 2006

VIA CERTIFIED MAIL 7005 1160 0001 2606 1604

Mr. Peter Cleveland  
6910 North Shadeland Ave., Suite 200  
Indianapolis, Indiana 46220

Re: Review of Response to Comments  
Crawfordsville II, LLC  
(Former Boulevard Cleaners)  
203 East South Blvd.  
Crawfordsville, Indiana 47933  
State Cleanup # 2005-06-216

Dear Mr. Cleveland:

The Indiana Department of Environmental Management (IDEM) has reviewed the Response to FSI Request (Response), prepared by Astbury Environmental Engineering, Inc., dated November 25, 2005. In a Further Site Investigation (FSI) Request letter, dated October 26, 2005, IDEM required clarifications of inconsistencies, corrections of omissions, and further investigation of the extent of contamination in the soil and groundwater. The contractor has agreed to locate and investigate the backfill of the former sanitary sewer line as a potential preferred migration pathway. The depth to groundwater and the flow direction will be clarified as data are collected over time. There will be additional borings and monitoring well installations to investigate the potential for dense non-aqueous phase liquid (DNAPL).

The majority of the contractor's responses are adequate and complete. However, two remaining issues must be addressed in further site investigations, as discussed below, when implementing the scope of work contained in the November, 2005 Response.

## Specific Comments

1. IDEM had previously commented that the provided quality assurance/quality control (QA/QC) documentation did not meet the full QA/QC submittal requirements. The contractor has argued that a trip blank (TB), equipment blank (EB), and duplicate (DUP), along with surrogate recoveries and chain-of-custodies (COCs) were provided for the soil and groundwater samples. IDEM agrees that the TP, EB, and DUP were collected with soil and groundwater samples; however, when defining the extent of soil and groundwater contamination, full QA/QC documentation, including site specific matrix spike/matrix spike duplicate, initial calibration, continuing calibrations, internal standards, and all raw data for the collected samples, along with TB, EB, DUP, surrogate recoveries, and COCs, must be provided. This is outlined in the RISC



Technical Guide, Appendix 2 at: [http://www.IN.gov/idem/land/risc/tech\\_guide/risc\\_app2.pdf](http://www.IN.gov/idem/land/risc/tech_guide/risc_app2.pdf).  
Analytical data submitted from future investigations must include full QA/QC documentation.

2. To address IDEM's concern regarding the potential for vapor intrusion, the contractor has agreed to collect a crawl space sample and analyze the sample using Method TO-14. The contractor proposes to use a 6 liter SUMMA canister over an 8 hour period. The use of TO-14 is acceptable as long as IDEM action levels can be met, otherwise, Method TO-15 will be necessary.

### Conclusions

The proposed actions outlined in the Response to FSI Request are acceptable and should be implemented. Upon completion of the additional scope of work, the Further Site Investigation report must be submitted.

Please submit three (3) copies of the FSI within sixty (60) days from receipt of this letter to the following address:

66-30  
Indiana Department of Environmental Management  
Office of Land Quality  
State Cleanup Section  
100 N. Senate Ave., IGCN, Room 1101  
Indianapolis, IN 46204-2241

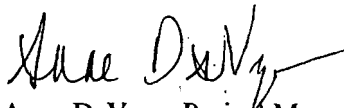
IDEM requests that reports be submitted three-hole punched and bound with metal prongs. When possible, documents should be double sided.

Failure to provide the FSI in a timely and complete manner may subject you to civil penalties, pursuant to IC 13-30-4-1.

Be advised that under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Indiana's Hazardous Substances Response Trust Fund (HSRTF) law, an owner, operator or responsible person is liable for the costs of response or remediation incurred by the State (IC 13-25-4-8).

If you have any questions, please contact me at 317/232-3413 or toll free from within Indiana at 800/451-6027.

Sincerely,



Anne DaVega, Project Manager  
State Cleanup Section  
Office of Land Quality

cc: IDEM State Cleanup File # 2005-06-216  
Don Neeley, Astbury Environmental Engineering, Inc.

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

66-30      trandolph  
Mr. Peter Cleveland  
6910 N. Shadeland Ave., Suite 200  
Indianapolis, IN 46220

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature

X

☐ Agent

☒ Addressee

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below ☒ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7005 1160 0001 2606 1604

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

PAUL S. KRUSE  
pkruise@parrlaw.com

PARR RICHEY  
& BREMSKEY  
& MORTON

ATTORNEYS

www.parrlaw.com

May 22, 2007

Crawfordsville Crs.  
Site # 2005.06.216

Not For Public View

223 WEST MAIN STREET  
POST OFFICE BOX 668  
LEBANON, IN 46052-0668  
(765) 482-0110  
or (317) 269-2509  
(765) 483-3444 Fax  
lebanon@parrlaw.com

RECEIVED

MAY 23 2007

DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

Ms. Nilia Moberly Green  
Project Manager, State Cleanup Section  
Office of Land Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
IGCN, Room 1101  
Indianapolis, IN 46204

RE: General Notice of Liability of Tom Shaver and the Shaver Estates  
and Request For Information, 203 East South Boulevard, Crawfordsville,  
Montgomery County, Indiana, State Cleanup # 2005-06-216

Dear Ms. Green:

I write on behalf of Mr. Thomas Shaver, The Estate of Mary L. Shaver, and The Estate of J. Noel Shaver in response to your letter to Mr. Paul Kruse dated March 12, 2007. Your letter references "[i]nformation submitted by Crawfordsville Square, LLC and Crawfordsville Square II, LLC" which "indicates that your clients . . . are former **operators** of the former drycleaners known as Boulevard Cleaners." (Emphasis added). You have not provided us with the information submitted by Crawfordsville Square nor given us any detail regarding the information you received from Crawfordsville Square. Therefore, as a threshold matter, Mr. Shaver has no meaningful way to respond to whatever information you have been provided. Nevertheless, the purpose of this letter is to provide you with sufficient information for you to satisfy yourself that neither Thomas Shaver nor either of the Shaver Estates are responsible for the cleanup on the subject property.

**1. Response on Behalf of Mr. Thomas Shaver**

Thomas Shaver did not own, nor did he ever operate, Boulevard Cleaners, and thus cannot be considered a Potentially Responsible Person (PRP) pursuant to I.C. § 13-25-4-8 (which, as you know, incorporates by reference the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a) ("CERCLA") liability standard. In sworn

interrogatory answers in the lawsuit filed by Crawfordsville Square, LLC and Crawfordsville Square II, LLC against various defendants, Mr. Shaver explained his relationship to the property in question as follows:

Thomas Shaver is the administrator for the estates of Mary L. Shaver and J. Noel Shaver. Mary L. Shaver and J. Noel Shaver died prior to the filing of the complaint in this matter. The Dry Cleaning Facility was owned and operated by J. Noel Shaver and/or Mary L. Shaver from August 1984 until July or August 1991, at which time the Dry Cleaning Facility was sold to Leinneaus Wheeler. During that time, J. Noel Shaver and/or Mary L. Shaver were tenants of W. J. Chaney, doing business as Boulevard Cleaners. Thomas Shaver is the surviving son of J. Noel Shaver and Mary L. Shaver. **Thomas Shaver has never owned or operated the Dry Cleaning Facility.** The information provided in the following answers to interrogatories is being provided by Thomas Shaver in his capacity as administrator for the estates of Mary L. Shaver and J. Noel Shaver.

*(Defendants Thomas Shaver, the Estate of Mary L. Shaver, and the Estate of J. Noel Shaver's Answers to Plaintiff Crawfordsville Square II LLC's First Interrogatories, Response to Interrogatory No. 2, pp. 5-6) (emphasis added).*<sup>1</sup> Because it is clear that Thomas Shaver has never owned or operated the facility in question, it logically follows that he is not, and cannot be, a Potentially Responsible Person (PRP). Therefore, we respectfully request that IDEM withdraw and rescind its "General Notice of Liability of Tom Shaver" dated March 12, 2007. If IDEM has any information from any source which it believes establishes liability on the part of Thomas Shaver by establishing that he operated the site at any time that the disposal of hazardous substances occurred at the site, we respectfully request that you provide that information promptly so that it can be addressed immediately.

**2. Response on behalf of The Estate of Mary L. Shaver, and The Estate of J. Noel Shaver**

Your letter states that contamination found at 203 East South Boulevard in Crawfordsville (the Site) "appears to be the result of historic contamination caused during operation of the Site as a dry cleaner." However, your letter does not state at what time the contamination occurred, nor does your letter provide any reason to believe that the contamination occurred while the Site was

---

<sup>1</sup> A true, accurate, and complete copy of these interrogatory responses has been provided in partial response to the Request for Information.

Ms. Nilia Moberly Green  
May 22, 2007  
Page 3

operated by Mary Shaver and/or J. Noel Shaver, both now deceased. (As noted above, Mary and Noel Shaver did not own the Site, but leased it from W. J. Chaney and were, therefore, never owners of the Site).

As you know, for liability to attach as to a prior operator of a subject property, it must be established that hazardous substances were released by "any person who at the time of disposal of any hazardous substance owned or operated" the facility. 42 U.S.C. § 9607(a)(2). There is no evidence of which Mr. Tom Shaver is aware that demonstrates that any contamination at the Site occurred at any time when his parents operated the business. Neither the plaintiffs in the pending Montgomery County suit regarding this property (of which you are aware) nor anyone else has produced any information to establish this required element. Therefore, even if the Shaver Estates may be categorized as "persons" pursuant to 42 U.S.C. § 9601(21) (a subject we need not resolve at this point), we respectfully submit that the Shaver Estates cannot properly be considered Potentially Responsible Persons given the absence of evidence of this critical element.

Moreover, if there could possibly be liability against the Shaver Estates, the real parties in interest would be the liability insurance carriers of the Estates because the Estates have no assets. Those insurance carriers would be entitled to raise the defense of the statute of limitations because no claims were brought against the estates within the required time limit pursuant to I.C. § 29-1-14-1(f). Perhaps more importantly, as the claim would in essence be a strict liability claim pursuant to 42 U.S.C. § 9607(a) (and not a "negligence" claim as provided for in I.C. § 29-1-14-1(f)), there can be no claim at all against the Shaver Estates by IDEM.

Therefore, we respectfully request that IDEM withdraw and rescind its "General Notice of Liability of the Shaver Estates" dated March 12, 2007. If IDEM has any information from any source which it believes establishes liability on the part of the Shaver Estates by establishing that either J. Noel or Mary Shaver operated the site at any time that the disposal of hazardous substances occurred at the site, we respectfully request that you provide that information promptly so that it can be addressed immediately.

### **3. Response to Request for Information**

Notwithstanding the responses provided above and our sincere belief that neither Thomas Shaver nor the Shaver Estates are properly considered Potentially Responsible Persons with respect to the contamination at the Site, we respond as follows to your request for information:

Request 1: The location of any above or underground tanks and associated piping.

Ms. Nilia Moberly Green  
May 22, 2007  
Page 4

Response: Mr. Shaver and the Shaver Estates lack any knowledge or information regarding this request except to the extent that information may be contained in documents previously made available for inspection and copying in the ongoing litigation involving the Site.

Request 2: The capacity and contents of any tanks.

Response: Mr. Shaver and the Shaver Estates lack any knowledge or information regarding this request except to the extent that information may be contained in documents previously made available for inspection and copying in the ongoing litigation involving the Site.

Request 3: The dates of any spills or releases of tetrachloroethene (PERC) or other hazardous substances at the Site.

Response: Mr. Shaver and the Shaver Estates are unaware of any such spills or releases and have no responsive information.

Request 4: Any incident report numbers.

Response: Mr. Shaver and the Shaver Estates are unaware of any incident reports.

Request 5: A description of any actions taken to clean up any spills or releases of PERC.

Response: Mr. Shaver and the Shaver Estates are unaware of any spills or releases, and are therefore not aware of any responses regarding spills or releases.

Request 6: Identify the period of time during which your client owned or operated (or leased) the Site.

Response: The Dry Cleaning Facility was owned and operated by J. Noel Shaver and/or Mary L. Shaver from August 1984 until July or August 1991, at which time the Dry Cleaning Facility was sold to Leinneaus Wheeler. During that time, J. Noel Shaver and/or Mary L. Shaver were tenants of W. J. Chaney, doing business as Boulevard Cleaners.

Request 7: Explain how your client disposed of any used PERC at the Site, providing names of any entities that transported or received the PERC for ultimate disposal.

Response: Neither Mr. Shaver nor the Shaver Estates ever disposed of any PERC at the Site. Information about what procedures were followed when Mr. Shaver's parents operated the

Ms. Nilia Moberly Green  
May 22, 2007  
Page 5

Site is contained in the accompanying interrogatory answers and may be contained in the documents previously made available for inspection and copying in the ongoing litigation involving the Site.

Request 8: Provide copies of any leases concerning this Site.

Response: Mr. Shaver has been unable to locate any relevant leases.

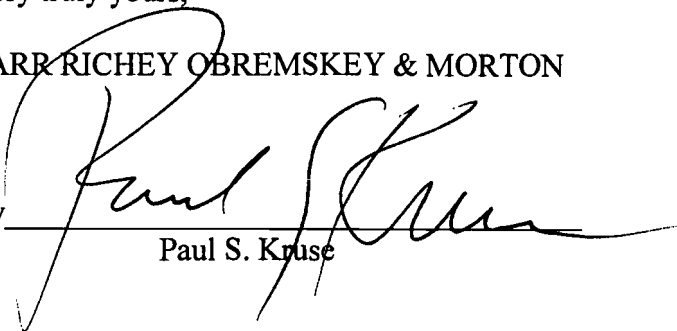
Request 9: Identify whether your client had a pretreatment permit with a municipal entity or an NPDES permit with IDEM.

Response: Neither Mr. Shaver nor the Shaver Estates ever disposed of any PERC at the Site. Information about what procedures were followed when Mr. Shaver's parents operated the Site is contained in the accompanying interrogatory answers and may be contained in the documents previously made available for inspection and copying in the ongoing litigation involving the Site.

Very truly yours,

PARR RICHEY OBREMSKEY & MORTON

By

  
Paul S. Kruse

lry  
cc: Tom Shaver  
L-220846

STATE OF INDIANA )  
 ) SS:  
MONTGOMERY COUNTY )

IN THE MONTGOMERY CIRCUIT COURT

CAUSE NO. 54C01-0508-PL-00331

CRAWFORDSVILLE SQUARE, LLC and )  
CRAWFORDSVILLE SQUARE II L.L.C., )

Plaintiffs, )

vs. )

ALLSTATE INSURANCE COMPANY, )  
HOOSIER INSURANCE COMPANY, )  
UNITED STATES FIDELITY & GUARANTY )  
INSURANCE COMPANY, LEINNEAUS )  
WHEELER, TAMARA YOUNT, RICK )  
BRIDWELL, THOMAS SHAVER, )  
THE ESTATE OF MARY L. SHAVER, )  
THE ESTATE OF J. NOEL SHAVER, and )  
THE ESTATES OF RUTH S. and WILLIAM R. )  
CHANEY, )

Defendants. )

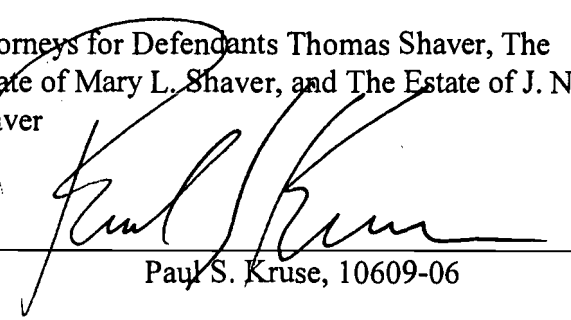
**DEFENDANTS THOMAS SHAVER, THE ESTATE OF MARY L. SHAVER,  
AND THE ESTATE OF J. NOEL SHAVER'S ANSWERS TO PLAINTIFF  
CRAWFORDSVILLE SQUARE II LLC'S FIRST INTERROGATORIES**

Come now the Defendants Thomas Shaver, The Estate of Mary L. Shaver, and The Estate of J. Noel Shaver (Shaver Defendants), by counsel, for their answers to the first interrogatories to Defendants Thomas Shaver, The Estate of Mary L. Shaver, and The Estate of J. Noel Shaver, state as follows:


PARR RICHEY OBREMSKEY & MORTON

Attorneys for Defendants Thomas Shaver, The  
Estate of Mary L. Shaver, and The Estate of J. Noel  
Shaver

By

  
Paul S. Kruse, 10609-06

I affirm under the penalties of perjury that the representations contained herein are true and correct to the best of my knowledge and belief.

  
Thomas Shaver, Individually, and as Administrator for the  
Estates of Mary L. Shaver and J. Noel Shaver

CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendants Thomas Shaver, The Estate of Mary L. Shaver, and The Estate of J. Noel Shaver's Answers to Plaintiff Crawfordsville Square II LLC's First Interrogatories has been duly served upon the following, by U.S. Mail, postage prepaid, and by electronic transmission, this 21 day of November, 2006:

Mr. Brent W. Huber  
Ms. Tonya J. Bond  
ICE MILLER LLP  
One American Square, Box 82001  
Indianapolis, Indiana 46282-0002

Mr. Kenneth W. Maher  
LAW OFFICE OF KENNETH W. MAHER  
8888 Keystone Crossing, Suite 1300  
Indianapolis, Indiana 46240

Mr. Theodore J. Blanford  
HUME SMITH GEDDES GREEN &  
SIMMONS LLP  
54 Monument Circle, 4th Floor  
Indianapolis, Indiana 46204

Mr. Andrew R. Falk  
Mr. Gregory P. Cafouros  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, Indiana 46204

Mr. Charles W. Browning  
Mr. Patrick Winters  
PLUNKETT & COONEY, P.C.  
38505 Woodward Avenue  
Suite 2000  
Bloomfield Hills, MI 48304

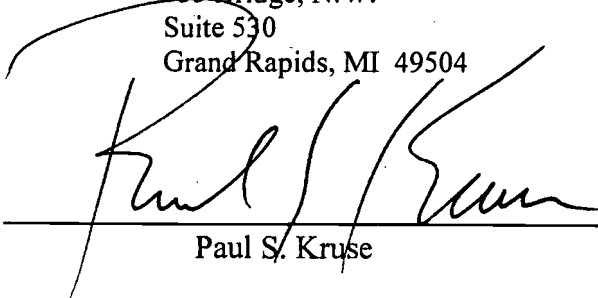
Mr. C. Rex Henthorn  
HENTHORN HARRIS & WHELIEVER  
122 East Main Street  
Post Office Box 645  
Crawfordsville, Indiana 47933

Mr. Lawrence K. Rynning  
310 South County Farm Road  
Post Office Box 1618  
Wheaton, Illinois 60189-1618

Mr. Bryce H. Bennett, Jr.  
Mr. Jeffrey B. Fecht  
RILEY BENNETT & EGLOFF, LLP  
Fourth Floor  
141 East Washington Street  
Indianapolis, Indiana 46204

Mr. George M. Plews  
Ms. Donna C. Marron  
PLEWS SHADLEY RACHER & BRAUN  
1346 North Delaware Street  
Indianapolis, Indiana 46202

Mr. Michael D. Almassian  
PLUNKETT & COONEY, P.C.  
Bridgewater Place  
333 Bridge, N.W.  
Suite 530  
Grand Rapids, MI 49504



Paul S. Kruse

**PARR RICHEY OBREMSKEY & MORTON**

225 West Main Street

Post Office Box 668

Lebanon, Indiana 46052

Telephone: (765) 482-0110

(317) 269-2509

Fax: (765) 483-3444

L-203112

**INTERROGATORY NO. 1:** Describe any and all releases, threatened releases, or suspected releases of hazardous or regulated substances (as defined by the state and federal environmental laws) on the Site, and explain and describe the circumstances regarding each such release, threatened release, or suspected release, describe any remediation efforts, if any, when each such release, threatened release, or suspected release occurred, and the date or dates of any remediation efforts.

**ANSWER:** Shaver Defendants object to this Interrogatory on the basis that it is vague and ambiguous as to the meaning and context as how the words “releases,” “threatened releases,” or “suspected releases” are used in this interrogatory. Without waiving its objection, Shaver Defendants respond that to the best of their knowledge and belief, no release to the environment of hazardous or regulated substances has occurred on the site during the period in which J. Noel Shaver and/or Mary L. Shaver were tenants of the Site.

**INTERROGATORY NO. 2:** Describe any and all releases, threatened releases, or suspected releases of hazardous or regulated substances (as defined by the state and federal environmental laws) on the Site, and explain and describe the circumstances regarding each such release, threatened release, or suspected release, describe any remediation efforts, if any, when each such release, threatened release, or suspected release occurred, and the date or dates of any remediation efforts.

**ANSWER:** The answers to interrogatories have been reviewed by Thomas Shaver. Thomas Shaver is the administrator for the estates of Mary L. Shaver and J. Noel Shaver. Mary L. Shaver and J. Noel Shaver died prior to the filing of the complaint in this matter. The Dry Cleaning Facility was owned and operated by J. Noel Shaver and/or Mary L. Shaver from August

1984 until July or August 1991, at which time the Dry Cleaning Facility was sold to Leinneaus Wheeler. During that time, J. Noel Shaver and/or Mary L. Shaver were tenants of W. J. Chaney, doing business as Boulevard Cleaners. Thomas Shaver is the surviving son of J. Noel Shaver and Mary L. Shaver. Thomas Shaver has never owned or operated the Dry Cleaning Facility. The information provided in the following answers to interrogatories is being provided by Thomas Shaver in his capacity as administrator for the estates of Mary L. Shaver and J. Noel Shaver.

**INTERROGATORY NO. 3:** Identify all employees, managers, operators, owners, contractors, trainers, specialists, and anyone else involved in any way with the Dry Cleaning Facility. Your answer should include the position held and general responsibilities of the person.

**ANSWER:** J. Noel Shaver was the original owner of the Dry Cleaning Facility and operated it until his death. Upon his death, the Dry Cleaning Facility was held in the name of the Estate of J. Noel Shaver and/or a trust created by his will for the benefit of Mary Shaver, until it was eventually sold to Leinneaus Wheeler. Mary L. Shaver did not work at the Dry Cleaning Facility. The following persons worked as employees at Boulevard Cleaners:

Timothy Alan Powell (313-40-7198)  
1501 Rosewood Lane  
Crawfordsville, IN 47933

Stephanie Catherine George (317-92-0053)  
1501 Rosewood Lane  
Crawfordsville, IN 47933

Barbara Janan Welliever (317-68-7755)  
Rt. 6 Box 106  
Crawfordsville, IN 47933

Bea Mason (315-38-6915)  
301 Canby Avenue Box 503  
Crawfordsville, IN 47933

Patricia Anglin  
1507 Athens Street  
Crawfordsville, IN 47933

Emma "Judy" Sowders  
607 Whitlock  
Crawfordsville, IN 47933

Stephanie George (317-92-0053)  
1501 Rosewood  
Crawfordsville, IN 47933

Brenda Davenport

Judy Arlene Brewster

Sheri Lynn Lane (309-66-0672)  
RR2 Box 388  
Crawfordsville, IN 47933

Grace Ann Gleason (307-68-4265)  
Crawfordsville, IN 47933

Linneaus J. Wheeler (314-30-9423)  
820A Martin Lane  
Crawfordsville, IN 47933

Eulah June Wheeler (314-42-6027)  
820A Martin Lane  
Crawfordsville, IN 47933

Carmen Irene Hunter

Christy D. Brooks

Joni Marie Epperson

Regina A. King (315-94-8674)  
706 Kentucky Street  
Crawfordsville, IN 47933

Angela C. Ellis (309-76-9404)  
3347 N 100 W  
Crawfordsville, IN 47933

Lois Elaine Carey (317-44-5825)  
RR7 Box 302  
Crawfordsville, IN 47933

Jezebelle (Jessie ) Daughtery

Darla J. Howard (305-76-6917)  
208 Whitlock  
Crawfordsville, IN 47933

Sara J. Sabens (316-74-0259)  
RR 1 Box 108  
Darlington, I 47940

Rebecca M. Shepherd (307-68-4423)  
17 Rock River Ridge  
Crawfordsville, IN 47933

Cami L. Baker (313-86-3786)  
110 Wilhoit  
Crawfordsville, IN 47933

Connie A. Lancaster (400-74-2716)  
P.O. Box 217  
Kingman, IN 47952

Melissa A. Cates (563-19-3594)  
310 South Green  
Crawfordsville, IN 47933

Gecka J. Long (310-44-3084)  
511 Allen  
Crawfordsville, IN 47933

Rhonda R. Curtsinger (308-70-6878)  
52 Cottonwood  
Crawfordsville, IN 47933

**INTERROGATORY NO. 4:** Identify, to your knowledge, any and all persons who have knowledge or claim to have knowledge of the operations of the Dry Cleaning Facility.

**ANSWER:** Shaver Defendants object to this Interrogatory on the basis that it is vague, ambiguous and overly burdensome in that it is not limited to a period of time nor is the meaning and context of the term "operations of the Dry Cleaning Facility" defined. Without waiving such objection, Shaver Defendants refer to their answer to Interrogatory No. 3.

**INTERROGATORY NO. 5:** Identify, to your knowledge, any and all persons who have knowledge or claim to have knowledge regarding releases at the Site, or the transportation, storage, generation, or disposal of regulated or hazardous substances to, from, or on the Site.

**ANSWER:** Shaver Defendants object to this Interrogatory on the basis that it assumes releases, however defined, have occurred at the Site. Without waiving such objection, Shaver Defendants state that dry cleaning chemicals were transported to the Site by Adco, Inc., Cedelia, Missouri, and Vanwaters & Rogers, Indianapolis, Indiana. Used filters were transported from the Site by Safety Kleen. The persons identified in answer to Interrogatory No. 3 may have knowledge regarding the storage of dry cleaning chemicals on the Site.

**INTERROGATORY NO. 6:** To your knowledge, state any other business or legal names of the Dry Cleaning Facility.

**ANSWER:** None.

**INTERROGATORY NO. 7:** Identify each and every action or other response you undertook since receiving notice of the initial Complaint, including a detailed description of the nature of the action or response, *e.g.*, whether you conducted investigations and/or interviews, the date such action or response began, each and every person involved or having knowledge or information related to such action or response, a detailed description of the results of each such action or other response, each and every Communication related to such actions or other response, and each and every Document related to or created as a consequence of each action or other response.

**ANSWER:** Upon receiving a letter from counsel for the Plaintiffs, the letter was delivered to Paul S. Kruse. Mr. Kruse then contacted a couple of insurance agencies in Crawfordsville to try to determine the insurance company that may have provided liability coverage for the Shaver Defendants. USF&G was ultimately determined to be the insurance company providing coverage and several letters were then sent to USF&G. Ultimately, USF&G acknowledged the existence of the insurance policies.

**INTERROGATORY NO. 8:** Identify, to your knowledge, every person responsible for keeping the records of the waste materials, dry cleaning materials, tetrachloroethene, PERC, or any hazardous substances used at the Dry Cleaning Facility.

**ANSWER:** Any records that were kept were maintained in boxes and placed in storage by J. Noel Shaver and eventually Mary L. Shaver. Thomas Shaver acquired possession of the boxes of documents upon Mary Shaver's death. A copy of all of the documents have previously been made available to the Plaintiffs, which indicate other entities that may have been responsible for keeping such records.

**INTERROGATORY NO. 9:** Describe the process that was used for handling, generating, storing, transporting, or disposing of waste materials, dry cleaning materials, tetrachloroethene, PERC, or any hazardous substances to, from, or on the Site.

**ANSWER:** All information regarding the process that was used is contained in the records previously provide to the Plaintiffs. Shaver Defendants would respond that outside contractors pumped dry cleaning materials from their trucks to a storage unit and/or the dry cleaning machine inside the Dry Cleaning Facility and that filters were drained back into the dry cleaning machine until dry, at which time they were placed in sealed drums for recovery by outside contractors. The identity of the contractors is contained in the records.

**INTERROGATORY NO. 10:** In using and/or disposing of waste materials, dry cleaning materials, tetrachloroethene, PERC, or any hazardous substances, identify the following:

- (a) when dry cleaning materials, tetrachloroethene, PERC, or any hazardous substances were first used at the Site;
- (b) on a month-by-month basis, approximately what volume of dry cleaning materials, tetrachloroethene, or PERC was transported to the Site;
- (c) on a month-by-month basis, approximately what volume of dry cleaning materials, tetrachloroethene, or PERC was transported away from the Site, by whom, how often, and where and how it was disposed.

**ANSWER:** Please see the records previously made available to the Plaintiffs by Shaver Defendants.

**INTERROGATORY NO. 11:** State the gross sales per year of the Dry Cleaning Facility.

**ANSWER:** The only information Thomas Shaver has in regard to this Interrogatory is the information contained in the documents previously provided to the Plaintiffs.

**INTERROGATORY NO. 12:** Identify, to your knowledge, every company used for generating, storing, transporting, or disposing of waste materials, dry cleaning materials, tetrachloroethene , PERC, or any hazardous substances to, from, or on the Site.

**ANSWER:** Please the records previously provided to the Plaintiffs.

**INTERROGATORY NO. 13:** If you contend that the loss of liability arising from the Contamination should be allocated in this action, state how you contend it should be allocated, why, to which parties or persons, and any and all facts or Documents that support such an allocation.

**ANSWER:** Shaver Defendants object to this Interrogatory on the basis that it calls for a legal conclusion. Shaver Defendants further object that this Interrogatory solicits information which may be protected by attorney-client privilege and the work product doctrine.

**INTERROGATORY NO. 14:** Identify any and all written or recorded statements pertaining to the facts alleged in the Complaint or the claims or defenses of any party. Your answer should include, but is not limited to, the name, address, and phone number of the person giving the statements, the name, address, and phone number of the person taking the statement, the date the statement was taken, whether the statement was written or recorded, whether the

statement or transcript was signed, the present location of the statement, recording, or transcript, the name, address and phone number of every person having a copy of the statement, recording, or transcript.

**ANSWER:** None.

**INTERROGATORY NO. 15:** Describe any Communication with the Indiana Department of Natural Resources (or its predecessors), the Indiana Department of Environmental Management ("IDEM") (or its predecessors), the Indiana Attorney General's Office, or any other state or federal environmental agencies related to the Dry Cleaning Facility, the Site, or the Complaint. For each, state when each such Communication occurred, why the Communication occurred, the persons involved in the Communication, and the substance and content of each such Communication.

**ANSWER:** If there was any such Communication, Thomas Shaver is unaware of it. See records previously provided to Plaintiff for any information that may exist.

**INTERROGATORY NO. 16:** State whether you are aware of any IDEM or other state or federal governmental agency investigations relating to the Dry Cleaning Facility or the Site, and, if so, describe the details of the investigation, how you came to know about the investigation, and the approximate date of the investigation.

**ANSWER:** None that I am aware. Please see the records previously provided that may pertain to this Interrogatory.

**INTERROGATORY NO. 17:** Identify every waste handling practice that was implemented at the Dry Cleaning Facility, how it was monitored, and who was responsible for monitoring it.

**ANSWER:** Filters were drained back into the dry cleaning machine until completely dry, then placed in sealed drums provided by outside vendors. Outside vendors then picked up the drums for disposal. This procedure was monitored by the onsite manager or employees at the facility.

**INTERROGATORY NO. 18:** Identify the dry cleaning machines and/or equipment used at the Dry Cleaning Facility including, but not limited to:

- (a) the make, model, and year of the machines and/or equipment;
- (b) whether it was a transfer machine, a dry to dry machine, or identify what other type of machine it was;
- (c) whether tanks or piping was used or present, and if so, whether they were above ground or below ground;
- (d) the maintenance schedule for the machines and/or equipment; and
- (e) who was responsible for maintaining the machines and/or equipment.

**ANSWER:** The only information Shaver Defendants have regarding the equipment is contained in the records previously provided to the Plaintiffs.

**INTERROGATORY NO. 19:** Were any of the dry cleaning machines or equipment used replaced? If so, Identify who made the decisions to replace it, when, why, what companies

were contacted regarding the replacement, what company made the replacement, and how the replaced machine or piece of equipment was disposed.

**ANSWER:** The only information Shaver Defendants have regarding the equipment is contained in the records previously provided to the Plaintiffs.

**INTERROGATORY NO. 20:** To your knowledge, was leak detection equipment or controls ever used at the Dry Cleaning Facility? If so, identify who was responsible for monitoring the leak detection equipment or controls. If not, describe the process for inspecting the Dry Cleaning Facility for leaks, how often that process was done, and who was responsible for inspecting for leaks. Identify documentation of all forms of leak detection.

**ANSWER:** Thomas Shaver is aware that visual checks were performed by the equipment operator on a daily basis.

**INTERROGATORY NO. 21:** Identify any and all witnesses who have or claim to have knowledge of any facts pertaining to the claims or defenses of any party to this action.

**ANSWER:** Various vendors and contractors for the Defendants would have information. Thomas Shaver has some knowledge of the facts. Investigation is ongoing.

**INTERROGATORY NO. 22:** Identify any and all witnesses who have or claim to have information regarding Contamination at the Site, operations at the Site, use of, storage of, transportation of, and/or disposal of waste materials, dry cleaning materials, tetrachloroethene, PERC, or any hazardous substances at the Site, and any others who may have information about the Site.

**ANSWER:** Thomas Shaver; employees, vendors and contractors for the facility.

**INTERROGATORY NO. 23:** Identify all leases or agreements with the landlord or owner of the Site, and describe the material terms of any such leases or agreements, including the terms regarding rent, risk of loss, indemnity, insurance, and the use of dry cleaning materials, equipment, and chemicals.

**ANSWER:** Shaver Defendants have previously disclosed all documents that have been maintained with regard to the Facility or the Site. J. Noel Shaver entered into a lease arrangement with the landlord/owner of the Site. No written lease agreement has been found.

**INTERROGATORY NO. 24:** Do you contend that the landlord or owner of the Site breached any leases or agreements that were in place? If so, identify what breaches occurred, how, when, and whether and how anyone was damaged by such breaches.

**ANSWER:** Undetermined at this time.

**INTERROGATORY NO. 25:** Identify each and every person you intend to call to testify at trial, including the subject matter of each person's anticipated testimony and the basis of the anticipated testimony.

**ANSWER:** Shaver Defendants have not identified the witnesses they intend to call nor the subject matter on which such witnesses are expected to testify. Shaver Defendants will seasonally supplement their response. Most of the information about which the witnesses will be expected to testify is contained in the documents previously provided to the Plaintiffs.

**INTERROGATORY NO. 26:** Identify each and every expert witness you intent to call at trial, including the subject matter of which each expert is expected to testify, the present occupation of each expert, the substance of the facts to which each such expert is expected to testify, the opinions to which each such expert is expected to testify, and a detailed summary of the grounds for each opinion to which each expert is expected t testify.

**ANSWER:** Shaver Defendants have not identified the expert witnesses they intend to call nor the subject matter on which such experts are expected to testify. Shaver Defendants will seasonally supplement their response.

**INTERROGATORY NO. 27:** For any defense you assert or reasonably anticipate asserting, Identify the defense, the legal theory or legal doctrine, each and every fact that you claim supports the defense, each and every person with information or knowledge relating to the defense, each and every Communication related to the defense, and each and every Document you claim supports this defense.

**ANSWER:** Shaver Defendants object to this Interrogatory on the basis that it calls for legal conclusions and analyses of legal theories and doctrines. Shaver Defendants further objects in that it requests information that may be subject to attorney-client privilege and work product doctrine. Shaver Defendants state that certain legal defenses are set out in the affirmative defenses provided in their answer. Investigation is ongoing.



# INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

*We make Indiana a cleaner, healthier place to live.*

Mitchell E. Daniels, Jr.  
Governor

Thomas W. Easterly  
Commissioner

Crawfordsville Cleaners  
Site # 2005-06-216  
General Correspondence

100 North Senate Avenue  
Indianapolis, Indiana 46204  
(317) 232-8603  
(800) 451-6027  
[www.IN.gov/idem](http://www.IN.gov/idem)

October 26, 2005

VIA CERTIFIED MAIL 7005 1160 0001 2606 0645

Mr. Peter Cleveland  
6910 North Shadeland Ave., Suite 200  
Indianapolis, Indiana 46220

Re: File Review and  
Further Site Investigation Request  
Crawfordsville II, LLC  
(Former Boulevard Cleaners)  
203 East South Blvd.  
Crawfordsville, Indiana 47933  
State Cleanup # 2005-06-216

Dear Mr. Cleveland:

The Indiana Department of Environmental Management (IDEM) reviewed the file pertaining to a release of hazardous substances for the former Boulevard Cleaners located at 203 East South Boulevard in Crawfordsville, Indiana. Specifically, the following document was reviewed:

- Initial Site Characterization Report, prepared by Astbury Environmental Engineering, Inc., dated August 19, 2005

As a result of our review, we have determined that you must conduct a Further Site Investigation (FSI) in order to fully delineate the nature and extent of contamination in accordance with 13-25-4. Guidance on how to characterize the nature and extent of the contamination can be found in IDEM's *Risk Integrated System of Closure (RISC) Technical Resource Guidance Document*, February 2001. IDEM requests that the FSI Report follow the general report outline format as provided in Appendix 1 of the IDEM's *RISC User's Guide*. The RISC guidance documents are available online at <http://www.in.gov/idem/land/risc/intro.html>.

Listed below are General and Specific Comments which must be addressed in the FSI.

## General Comments

Several inconsistencies or contradictions were noted in the Initial Site Characterization (ISC) Report which need clarification. These issues are outlined in the Specific Comments below and must be addressed.



The vertical extent of the tetrachloroethylene (PCE) contamination has not been determined, and additional investigation is required.

#### Specific Comments

1. The depth to groundwater needs to be clarified. In the Introduction (page 1, paragraph 5), depth to groundwater is described as 9 to 14 ft. In the Hydrogeology Section (page 9, section 3.1.2), depth to groundwater is reported as 6.19 ft. to 7.26 ft. In Table 8, Well Data and Groundwater Elevations, the depth to groundwater ranges from 4.37 to 8.00 feet. The contractor must provide clarification on the depth to groundwater.
2. The groundwater flow direction is reported on page 6, in paragraph 2, as "to the west or southwest." However, on page 9, in paragraph 4, it is reported as "primarily to the south with components to the southwest and southeast from MW-3." Then, on page 9, in paragraph 5, three groundwater gradients were calculated, flowing to the south once and the west twice. Although it was not stated by the contractor, the sum of the groundwater flow directions indicates a radial flow pattern to the south with western and southeastern components. Understanding the groundwater flow direction should lead to an understanding of the contaminant transport and migration.
3. On Page 8, paragraph 6, the contractor states that there are no characteristics that would cause preferred contaminant pathways through the soil because none of the soil contamination appears to be near the surface and "the only piping trenches running through the Site may be the blocked sanitary sewer line." The backfill around the sanitary sewer line is a preferential pathway, even if the pipe has been blocked. The sanitary sewer was not found on any of the illustrations. The blocked sanitary sewer needs to be illustrated and should be considered as a preferential pathway.
4. Figure 10, VOCs Detected In Ground Water Map: The illustration shows chlorocarbons radially distributed in all directions from the building. There are relatively higher concentrations to the southwest with 11,000 ppb of PCE in MW-1, and another relatively high concentration of 980 ppb PCE and 5.1 ppb of TCE at MW-4, at the northwest corner of the property. None of the contractor's groundwater flow interpretations included a northwesterly component of flow. There is a sanitary sewer line located off-site in the street intersection at the northwest corner of the property. It is likely that the blocked sanitary sewer from the building connects at the northwest corner of the property. The backfill of the sewer trench is a likely preferred pathway for contaminant transport and needs to be investigated.
5. Table 11, Soil Analytical Results: Four borings (AB-5, AB-7, AB-9, and AB-11) contained concentrations of PCE in soil above RISC residential default closure levels (RDCLs). The soil samples collected from the deepest intervals at these four borings yielded laboratory results of PCE concentrations in excess of the RISC RDCL, and PCE in the lower interval at boring AB-5 exceeded the RISC industrial default closure level. The full vertical extent of soil contamination is not defined. It is necessary to sample the soil below the depths of these samples to determine the full vertical extent of contamination.
6. The gasoline hydrocarbon impact to soil is likely to be limited to the vadose zone. Below the water table, it becomes a ground water problem. However, the chlorocarbon impact may not be limited to the vadose zone. Chlorinated solvents are less viscous and heavier than water and migrate more easily through soil. The identified water bearing zones are described as thin, discontinuous sand lenses in the glacial deposits. Due to the high concentration of PCE at MW-3, the investigation of the vertical extent of contamination needs to continue to determine whether or not chlorocarbons have migrated below the sand lenses.
7. The ground water contaminant level of PCE reported from MW-3 was 76,000 ppb. This concentration is enough to presume that dense nonaqueous phase liquid (DNAPL) is present. In

assessing the potential for DNAPL, Geological Services staff refers to the literature reference of Pankow and Cherry (1995, Dense Chlorinated Solvents and other DNAPLs in Groundwater, p. 222), who state that "As a 'rule-of-thumb,' the finding of dissolved concentrations that exceed 1% of the effective solubility should probably be cause for serious consideration of the presence of a DNAPL phase in the subsurface." The general statement for DNAPL presence is indicated by 1% of solubility at 15 C, or 59 F. For PCE, the 1% solubility is 2,384 ppb. The 76,000 ppb PCE concentration in MW-3 was approximately 32% of the solubility. Considering the non-ideal monitoring well placement and the exceedance of the 1% solubility, the site needs to be investigated for DNAPL in the vicinity of MW-3. Monitoring wells need to be installed to the depth of bedrock or the bottom limiting layer of the aquifer. Additional monitoring wells need to be installed in the area of the former building footprint and consideration needs to be given to the former sanitary sewer line as a preferential pathway for horizontal migration.

8. Table 11, Soil Analytical Results, show that soil samples were collected from soil borings AB-13, AB-14, and AB-16. However, laboratory analytical results for soil samples collected from these three borings could not be located in Appendix F, Soil Laboratory Analytical Data Sheets. The provided Chain-of-Custody forms in Appendix F did not include soil samples collected from these borings. Please clarify this discrepancy.
9. Table 13, Groundwater Analytical Results, show that groundwater samples were collected from wells MW-6, MW-7, MW-8. However, laboratory analytical results for groundwater samples collected from these wells could not be located in Appendix G, Groundwater Laboratory Analytical Data Sheets. The provided Chain-of-Custody forms in Appendix G did not include groundwater samples collected from these wells. Please clarify this discrepancy.
10. The age of the previous usage of retail gasoline facility is unknown. Since leaded gasoline was still being used in the late 1970's, the potential for contaminants resulting from the use of leaded gasoline exists. Justification and supporting documentation must be provided to illustrate that leaded gasoline was not used at this site. Otherwise, soil and groundwater samples must be collected and analyzed to assure lead contamination does not exist.
11. Except for the chain-of-custodies and surrogate recoveries, no other quality assurance/ quality control (QA/ QC) documentation was provided for soil and groundwater samples collected in June and July 2005. When defining the extent of soil and groundwater contamination, full QA/QC documentation is required, as outlined in the RISC Technical Guide, Appendix 2 at: [http://www.IN.gov/idem/land/risc/tech\\_guide/risc\\_app2.pdf](http://www.IN.gov/idem/land/risc/tech_guide/risc_app2.pdf).

## **Conclusions**

The complete extent of soil and groundwater contamination has not been delineated and additional investigation is required. The ground water contamination investigation in the vicinity of the former building is inadequate; additional investigation is necessary to assess the potential presence of DNAPL. In addition, the sanitary sewer needs to be investigated as a preferential pathway and should be illustrated on an appropriately scaled map.

In recent years, the potential for human exposure to contaminants through vapor intrusion from the subsurface environment has become an increasing concern. In general, IDEM currently recommends that the potential for vapor intrusion be evaluated at sites where significant levels of contaminants in soil and/or groundwater are within a distance of 100 feet of homes or inhabited buildings. The neighboring barber shop appears to be within 100 feet of high levels within the groundwater contaminant plume. In order to provide assurance that people are not at an increased health risk, the contractor should

demonstrate that vapors of the chemicals of concern do not exist (at health risk levels) in or beneath structures near the groundwater plumes.

The contractor has concluded that the extent of contamination has been delineated and proposed a pilot test for remedial action. The proposed multi-phase extraction (MPE) system seems appropriate for the site conditions and contaminants present. However, it is premature to begin the pilot test before the full extent of contamination is known.

Please submit three (3) copies of the FSI within sixty (60) days from receipt of this letter to the following address:

66-30  
Indiana Department of Environmental Management  
Office of Land Quality  
State Cleanup Section  
100 N. Senate Ave., IGCN, Room 1101  
Indianapolis, IN 46204-2241

IDEM requests that reports be submitted three-hole punched and bound with metal prongs. When possible, documents should be double sided.

Failure to provide the FSI in a timely and complete manner may subject you to civil penalties, pursuant to IC 13-30-4-1.

Be advised that under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Indiana's Hazardous Substances Response Trust Fund (HSRTF) law, an owner, operator or responsible person is liable for the costs of response or remediation incurred by the State (IC 13-25-4-8).

If you have any questions, please contact me at 317/232-3413 or toll free from within Indiana at 800/451-6027.

Sincerely,



Anne DaVega, Project Manager  
State Cleanup Section  
Office of Land Quality

cc: IDEM file room  
Don Neeley, Astbury Environmental Engineering, Inc.

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

66-30      trandolph  
Mr. Peter Cleveland  
6910 N. Shadeland Ave., Suite 200  
Indianapolis, IN 46220

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)      B. Date of Delivery

Signature

D. Is delivery address different from item 1?

If YES, enter delivery address below: ☒ No

3. Service Type

- ☒ Certified Mail      ☐ Extra Mail  
☐ Registered      ☒ Return Receipt for Merchandise  
☐ Insured Mail      ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)      ☐ Yes

2. Article Number (Copy from service label)

7005 1160 0803 2606 0645

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

①

Crawfordsville Ctrs.

Site # 2005.06.216

General Correspondence

September 1, 2005

WRITER'S DIRECT NUMBER: (317) 236-2320

DIRECT FAX: (317) 592-4260

INTERNET: Tonya.Boller@icemiller.com

Via Certified Mail

Indiana Department of Environmental  
Management  
Indiana Government Center North  
100 N. Senate Ave.  
Indianapolis, IN 46204

Department of Natural Resources  
402 West Washington Street  
Indianapolis, IN 46204

Office of the Indiana Attorney General  
Indiana Government Center South  
302 W. Washington St.  
Indianapolis, IN 46204

Re: Notice Pursuant to Indiana Code § 13-30-1-2

Dear Sirs or Madams:

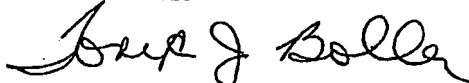
Pursuant to Indiana Code §13-30-1-2, Crawfordsville Square II L.L.C. ("Crawfordsville Square") hereby gives written notice that it intends to bring a private action for the protection of the Indiana environment in the name of the State. The contaminated property is located at 203 East South Boulevard, Crawfordsville, Indiana.

I have enclosed a copy of the Complaint filed in Montgomery County that outlines Crawfordsville Square's allegations. Our investigation indicates that any environmental contamination occurred prior to Crawfordsville Square purchasing the property. However, to date, none of the prior operators or their liability insurers has agreed to assume responsibility for this problem. Crawfordsville Square would like to pursue this matter on behalf of the State of Indiana so that it may obtain funds from responsible parties to remediate the contamination. Once the prescribed 90 days has lapsed, Crawfordsville Square will amend its Complaint.

If you require additional information, please feel free to contact me.

Very truly yours,

ICE MILLER



Tonya J. Boller

TJB/sb  
Enclosure

C'ville II 1524



January 27, 2006

WRITER'S DIRECT NUMBER (317) 236-5942  
direct fax: (317) 592-4822  
Internet: Brent.Huber@icemiller.com

**Via Certified Mail**

Indiana Department of Environmental  
Management, c/o Matt Klein  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, Indiana 46204

Office of the Indiana Attorney General  
Indiana Government Center South  
302 West Washington Street  
Indianapolis, Indiana 46204

Department of Natural Resources  
402 West Washington Street  
Indianapolis, Indiana 46204

**Re: Notice Pursuant to Indiana Code § 13-30-1-2**

**To Whom It May Concern:**

Attached is a Notice dated September 1, 2005 that was sent by our client pursuant to Indiana Code § 13-30-1-2. Our client has since determined that the current owner of the subject property is Crawfordsville Square LLC rather than Crawfordsville Square II LLC. We write to confirm that Crawfordsville Square LLC intends to bring a private action for the protection of the Indiana environment in the name of the State. The contaminated property is located at 203 East South Boulevard, Crawfordsville, Indiana.

Our investigation indicates that the environmental contamination occurred prior to Crawfordsville Square's purchase of the property in approximately 1999. To date, however, none of the prior operators or their liability insurers has agreed to assume responsibility for this problem. Our clients, Crawfordsville Square LLC and Crawfordsville Square II LLC, would like to pursue their claims in this matter on behalf of the State of Indiana in order to obtain funds from the responsible parties to remediate the contamination on the subject property.

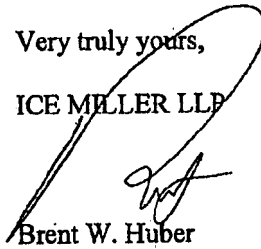
Unless we hear from you in reasonable amount of time, and at least within 90 days, we will assume that the correction regarding the identity of the true owner of the property in question will not be an issue, and Crawfordsville Square LLC will be authorized to bring its claims in the name of the State pursuant Indiana Code § 13-30-1-2.

If you require additional information or have questions, please feel free to contact me.

Indiana Department of Environmental Management  
Office of the Indiana Attorney General  
Department of Natural Resources  
January 27, 2006  
Page 2

Very truly yours,

ICE MILLER LLP



Brent W. Huber

BWH/kaw  
Enclosure

cc: Tonya Bond

INDY 1675381v1



July 28, 2006

WRITER'S DIRECT DIAL: (317) 236-5942  
DIRECT FAX: (317) 592-4822  
INTERNET: BRENT.HUBER@icemiller.com

**CERTIFIED MAIL**

Indiana Department of Environmental Mgmt.  
c/o Matt Klein  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204

Office of Indiana Attorney General  
Indiana Government Center South  
302 West Washington Street  
Indianapolis, IN 46204

Department of Natural Resources  
402 West Washington Street  
Indianapolis, IN 46204

**RE: Notice Pursuant to Indiana Code § 13-30-1-2; *Crawfordsville Square II LLC v. Bridwell et al.*; Montgomery County Circuit Court; Cause No. 54C01-0508-PL-331**

Dear Mr. Klein:

As stated in our notices dated September 1, 2005 and January 27, 2006, we are counsel for Crawfordsville Square, LLC and Crawfordsville Square II, LLC. These two entities are bringing a private cause of action for the protection of the Indiana environment in the name of the State. The contaminated property is located at 203 East South Boulevard, Crawfordsville, Indiana. Our clients have identified all of the prior owners and operators of the property that are believed to be responsible for the contamination.

The investigation of our clients' environmental consultant, Astbury Environmental, and our clients' own investigation appears to indicate that the contamination occurred prior to Crawfordsville Square's purchase of the property in approximately 1999. The dry cleaning solvents in the soil and groundwater are believed to have been used in the dry cleaning operation by the prior owners and operators prior to the date on which the dry cleaning facility was moved to another location, in late 1999. To date, none of the prior operators, prior owners, or their liability insurers has agreed to assume responsibility for this problem. Our clients, Crawfordsville Square, LLC and Crawfordsville Square II, LLC, are continuing to pursue their claims in this matter on behalf of the State of Indiana in order to obtain funds from the responsible parties to remediate the contamination on the subject property.

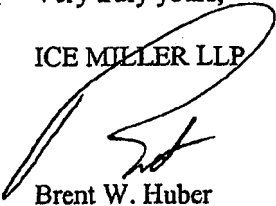
July 28, 2006  
Page 2

The purpose of this notice is to confirm that both Crawfordsville Square, LLC and Crawfordsville Square II, LLC will be pursuing this action in the name of the State and that they intend to pursue this action against all of the prior owners and operators that have been identified to date, along with their insurers, as well as any other subsequent owners, operators or insurers that are discovered after the date of this notice. Our clients believe they have already acquired the rights to bring these claims in the name of the State by virtue of their prior notices and pursuant to Indiana Code § 13-30-1-2, but they wanted to send this follow-up notice to you out of an abundance of caution in the event that the defendants in the above-referenced action attempt to challenge any aspect of our clients' claims or their authority to bring these claims in the name of the State.

If you require additional information or have questions, please feel free to contact me.

Very truly yours,

ICE MILLER LLP



Brent W. Huber

BWH/ldb

cc: Tonya J. Bond

STATE OF INDIANA  
MONTGOMERY COUNTY CIRCUIT COURT

CRAWFORDSVILLE SQUARE, LLC and  
CRAWFORDSVILLE SQUARE II, LLC,

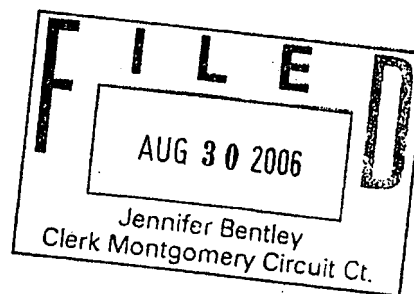
Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY,  
HOOSIER INSURANCE COMPANY,  
UNITED STATES FIDELITY & GUARANTY  
INSURANCE COMPANY, LEINNEAUS  
WHEELER, TAMARA YOUNT, RICK  
BRIDWELL, THOMAS SHAVER, THE  
ESTATE OF MARY L. SHAVER, THE  
ESTATE OF J. NOEL SHAVER, and THE  
ESTATES OF RUTH S. and WILLIAM R.  
CHANEY,

Defendants.

CAUSE NO. 54C01 0508 PL 00331



**THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs Crawfordsville Square, LLC and Crawfordsville Square II, L.L.C. (collectively, "Crawfordsville Square" or "Plaintiffs") state as follows for their Third Amended Complaint and Demand for Jury Trial:

**Introduction**

1. Crawfordsville Square brings this action to obtain funding to remediate soil and groundwater contamination in Montgomery County, to restore the environment, and thereby improve the economy in the Crawfordsville area.

2. The Defendants are Allstate Insurance Company ("Allstate"), Hoosier Insurance Company ("Hoosier") and United States Fidelity & Guaranty Insurance Company ("USF&G") (collectively "Insurer Defendants") and their insureds, Leinneaus Wheeler, Tamara Yount, Rick Bridwell, Thomas Shaver, the Estates of Mary L. Shaver and of J. Noel Shaver, (collectively

"Operator Defendants"), and the Estates of Ruth S. Chaney and William R. Chaney (collectively, "Owner Defendants").

3. The Operator Defendants each owned or operated a full service drycleaners known as Boulevard Cleaners located at 203 East South Boulevard, Crawfordsville, Indiana (the "Site"). The Owner Defendants owned the Site and leased it to the Operator Defendants. The soil and groundwater at the Site were inadvertently contaminated with chemicals used in the dry cleaning process (the "Contamination"). Even though the liability created by this Contamination should be covered by liability insurance, the Insurer Defendants have refused to make a timely coverage decision or cooperate in a resolution.

#### The Parties

4. Crawfordsville Square, LLC and Crawfordsville Square II, LLC are domestic limited liability companies with their principal place of business in Indianapolis, Indiana. All of their members are Indiana citizens.

5. Allstate Insurance Company is an Illinois company with its principal place of business in Northbrook, Illinois.

6. Hoosier Insurance Company is an Indiana company with its principal place of business in Indianapolis, Indiana.

7. United States Fidelity & Guaranty Company is a Maryland company with its principal place of business in Baltimore, Maryland.

8. Leinneaus Wheeler is a resident of Montgomery County in Crawfordsville, Indiana.

9. Tamara Yount was formerly a resident of Montgomery County, Crawfordsville, Indiana.

10. Rick Bridwell is a resident of Montgomery County, Crawfordsville, Indiana.

11. Thomas Shaver is a resident of Montgomery County, Crawfordsville, Indiana.

12. Mary L. Shaver and J. Noel Shaver were residents of Montgomery County and are now deceased.

13. Ruth S. Chaney and William R. Chaney were residents of Montgomery County and are now deceased.

#### **Jurisdiction and Venue**

14. Crawfordsville Square II, LLC is the current owner of the Site that is the subject of this action.

15. Jurisdiction and venue are proper here because the Site is located in Montgomery County, Crawfordsville, Indiana and the greater percentage of individual defendants included in the Complaint reside in Montgomery County, Crawfordsville, Indiana.

#### **Factual Background**

16. The Site was contaminated by chemicals used in the dry cleaning process.

17. The Chaney's were prior owners of this real estate and leased the Site to the Operator Defendants.

18. For a period of time in 1999, Crawfordsville Square, LLC owned the Site and leased it to Tamara Yount.

19. Each of the Operator Defendants' leases required the tenants to indemnify their landlords against losses and to obtain comprehensive general liability insurance that named the Chaney's, and later Crawfordsville Square, LLC, as additional insureds.

20. True and accurate copies of the leases with Bridwell, Yount (formerly Tamara Will), and Joyce Fitzwater are attached as Exhibits A, B, and C, respectively. A similar lease or leases were believed to be in place between the Chaney's and the Shavers during their operation of the Site.

21. Ruth Chaney was the wife and sole heir of W.R. Chaney.

22. The Chaney's assigned their rights and causes of action to Plaintiffs when Plaintiffs acquired the Site.

23. Operator Defendants each utilized dry cleaning chemicals during the time that they owned or operated Boulevard Cleaners as a full service drycleaners.

24. Insurer Defendants each insured the liabilities of at least one of the Operator Defendants during the time that they owned or operated Boulevard Cleaners.

25. Insurer Defendants also insured the Owner Defendants, the Chaney's, and later, in the case of Hoosier, Crawfordsville Square.

26. Hoosier insured the Owner Defendants and Operator Defendants at the Site for approximately nine (9) years—during Leinneaus Wheelers' operation of Boulevard Cleaners in or around 1991 through 1994, then again when Tamara Yount operated Boulevard Cleaners in or around 1996 through 1999, and again when Joyce Fitzwater operated the facility at the Site in approximately 1999.

27. Hoosier's policies are not attached because they are voluminous.

28. Rick Bridwell operated Boulevard Cleaners in or around 1994 through 1996. Allstate Insurance Company has agreed to defend and indemnify Mr. Bridwell without a reservation of rights. Allstate also insured the liabilities of the Owner Defendants, the Chaney's, but has not yet agreed to insure the liabilities of the Chaney's or their assignees, the Plaintiffs.

29. Allstate's policies are not attached because they are voluminous.

30. USF&G insured the Shavers' operations at the Site for approximately seven (7) years, during the period when the Shavers operated Boulevard Cleaners in or around 1984 through 1991. USF&G also insured Wheeler and the landlords, the Chaney's, during this time frame.

31. USF&G's policies are not attached because they are voluminous.

32. In or about late 1999, when Boulevard Cleaners moved to 1400 Ladoga, Crawfordsville, Indiana, the Site became a "drop off" only Site, meaning that dry cleaning processing ceased at the Site.

33. Prior to the time when Boulevard Cleaners moved to the Ladoga location, Operator Defendants' operation of Boulevard Cleaners at the Site resulted in releases of tetrachloroethene ("PERC") and other chemicals related to the dry cleaning business that contaminated the soil and groundwater at the Site and caused the Contamination.

34. The information available indicates that these releases were most likely inadvertent and necessarily occurred during the course of the Operator Defendants' activities at the Site.

35. Crawfordsville Square recently became aware of the Contamination when it conducted an investigation of the Site in preparation for the sale of the property. The investigation discovered the presence of PERC and other chemicals related to dry cleaning in the soil and groundwater.

36. Prior clean up efforts at the Site after the sale by Ruth Chaney indicated that all actionable levels of the contamination had been remediated, and the dry cleaning contamination that has given rise to this action could not have been discovered earlier despite the exercise of reasonable care.

37. None of the Insurer Defendants has agreed to pay for the damages caused by the dry cleaning chemicals even though the Contamination appears to have been inadvertent and resulted in precisely the type of liability that the Indiana courts have determined is covered under general liability insurance policies.

38. Prior to the filing of its Complaint, Plaintiffs, through counsel, repeatedly advised Defendants that the Site was the subject of an imminent real estate transaction and that time was of the essence.

39. Due to the actions of certain Defendants, Plaintiff was unable to hold a settlement conference with the parties to reach an amicable resolution.

40. As a result of Defendants' refusal to assume responsibility for their actions, the buyer has refused to acquire the Site, resulting in additional loss and damage to Crawfordsville Square.

41. As a result of the Contamination and to prevent potential migration of the Contamination off the Site, Crawfordsville Square has incurred and will continue to incur costs to investigate and cleanup the Site.

42. The Contamination diminishes the current market value of the Site.

43. Irrespective of the success of the remediation of the Site, the value of the Site has and will be adversely affected by the stigma from the Contamination at the Site caused by the Operator Defendants' release of PERC and other dry cleaning chemicals.

44. The Contamination on the Site is injurious to health, indecent, offensive to the senses, and an obstruction to the free use of property such that it interferes with the comfortable enjoyment of life or property.

45. The condition of the Site creates a public nuisance for purposes of Indiana Code § 32-30-6-6 and the common law of this State.

**Claims for Damages, Equitable Relief, and Declaratory Relief**  
**Against Operator Defendants and Owner Defendants**

46. Crawfordsville Square repeats and reincorporates the allegations of Paragraphs 1 through 45 above as if fully stated herein.

47. Crawfordsville Square is entitled to damages and equitable relief from Defendants under the statutes and common law of the State of Indiana.

48. Operator Defendants caused or contributed to the Contamination at the Site.

49. The release of hazardous substances at the Site poses a risk to human health and to the environment.

50. As owners of the Site, the prior Owner Defendants are liable to the State for all costs, fees, and expenses associated with the Contamination even if one or more of the Operator Defendants caused the Contamination.

51. The Contamination will cause irreparable harm to Crawfordsville Square if Defendants are not compelled to remediate the soil and groundwater at the Site.

52. Crawfordsville Square has incurred and will incur reasonable attorneys' fees in bringing claims.

53. Indiana Code § 13-30-9-2 provides for recovery of reasonable costs of removal and remedial actions, as well as attorneys' fees, from persons who caused or contributed to the release of a hazardous substance that poses a risk to human health and the environment.

54. Indiana Code § 13-30-9-3 provides that the court shall allocate the costs of the removal or remedial action in proportion to the acts or omissions of each party using legal and equitable factors that the court determines are appropriate.

55. Defendants' actions have resulted in the loss of the sale of the Site, resulting in additional loss, damage, and injury to Crawfordsville Square.

56. The stigma of the Contamination decreases the value of the Site, causing additional harm to Plaintiffs.

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

\*Internal Deliberative Communication Not for Public View

OFFICE MEMORANDUM

DATE: August 3, 2007

TO: Nilia Moberly Green  
SCP

THRU: Larry Studebaker *LSD 8/6/07*

FROM: Chris Bonniwell *CB 8/6/07*  
Geological Services

SUBJECT: Further Site Investigation  
Former Boulevard Cleaners  
Crawfordsville, Putnam, IN  
Site #0506216

RECEIVED

AUG 09 2007

DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

Per your request, I have reviewed the above documents, prepared by Astbury Environmental Engineering, Inc. and dated 7/3/07. I have the following comments:

**SITE REVIEW**

*See the previous site review in the Geological Services memorandum dated April 9, 2007 for background information. New information is reviewed below.*

*Further Site Investigation Sampling*

A further site investigation was conducted on May 16 and 17, 2007. Seven borings (AB-23 through AB-29) were advanced and sampled at depth to provide vertical soil delineation of the solvent plume. Soil samples were collected on either side of the former UST cavity to evaluate the presence of lead. Shallow soil samples were collected from borings AB-25, AB-26, AB-28, and AB-29 to provide additional data on the overall contaminant mass. Four additional samples were collected from sanitary sewer and water line backfill areas for their evaluation as a preferential pathway. All soil samples were screened with a photoionization device (PID) for headspace vapors, and under a fluorescent lamp to determine the presence of free product.

Borings AB-25, AB-26, AB-28, and AB-29 were completed as additional 2 inch monitoring wells (MW-15, MW-16, MW-17, and MW-18) surrounding the apparent primary contaminant

source area of the property. Groundwater gauging and sampling of all 23 monitoring wells were performed on May 24, 2007. Gauging included the use of an interface probe to monitor for possible dense non-aqueous phase liquids (DNAPL).

Vapor sampling was performed in the crawl space of Carpenter's Barber Shop, immediately adjacent to the west of the site. A vapor sample was collected on May 21, 2007 using an evacuated 6.0 liter SUMMA canister equipped with a critical orifice to bring the canister to atmospheric pressure over an eight hour period.

#### *Analytical Results*

Sixteen soil samples were collected from seven borings, and four additional locations along utility lines. Vertical delineation for PCE was incomplete at boring locations AB-23, AB-24, and AB-29 as deep samples exceeded the RISC industrial default closure level (IDCL) of 0.058 mg/kg. The maximum PCE soil concentration of 7.2 mg/kg was detected in boring AB-23 at 18-20 feet bgs. Soil vertical delineation of PCE was accomplished at boring locations AB-25, AB-26, AB-27, and AB-28 at depths ranging from 14 to 20 feet. Five boring samples, and one utility line backfill sample, exceeded the RISC IDCL for PCE. Two soil samples (AB-24, 16-18 ft, and AB-25, 8 - 10 ft) exceeded the RISC residential default closure level (RDCL) for PCE. The greatest soil concentrations of PCE are located underlying the former site building, in the former UST cavity, and in the sewer line backfill adjacent to the former site building. One sample (AB-23, 18 - 20 ft) exceeded the RISC IDCL for TCE, and one sample (AB-26, 10-12 ft) exceeded the RISC RDCL for TCE. The maximum concentration (0.72 mg/kg) detected was in AB-23 in the area of the former UST cavity at a depth of 18-20 feet. Both soil samples (AB-23, 18-20 ft, and AB-26, 10 to 12 feet) collected for lead analysis exhibited concentrations less than the 81 mg/kg RDCL. Three of the four utility backfill samples were below the RDCL for PCE. Backfill sample SS-1 exhibited a PCE concentration (4.4 mg/kg) well above the IDCL (0.64 mg/kg).

Groundwater gauging data indicated a general gradient to the south-southwest with some components to the south, southeast, and west. Twenty-three groundwater samples were submitted for laboratory analysis of VOCs. PCE was detected in samples from nine monitoring wells. Seven of these samples exceeded the IDCL of 55 µg/l, and two exceeded the RDCL of 5 µg/l. The maximum concentration of 130,000 µg/l was observed at the location of the former site building at MW-3. The PCE groundwater plume extends primarily downgradient to the southwest, and upgradient to the north of the former site building. Two groundwater samples exceed the IDCL for TCE, and an additional three exceeded the RDCL. The TCE plume extends both upgradient to the north, and downgradient to the south of the former site building.

A groundwater grab sample collected from soil boring AB-23, adjacent to the former UST location, exhibited benzene (410 µg/l) above the IDCL (52 µg/l). Ethylbenzene exceeded the RDCL (700 µg/l) at 2,100 µg/l, and xylenes were present at the RDCL of 10,000 µg/l. Lead was below the RDCL for the grab sample. No VOCs were detected in the vapor sample collected from the Carpenter's Barber Shop crawl space.

## GENERAL COMMENTS

The FSI was successful in providing a better understanding of the groundwater and soil contamination. However further investigation is necessary to completely delineate and monitor the contaminant plume.

The vertical delineation of contamination is incomplete for the site. AEE recognizes this, and appropriately recommends advancing soil borings to a depth of 30 feet at each of the locations where deep samples exceeded the RISC RDCL for PCE.

The investigation into utility line backfill locations as a preferred pathway is also incomplete. While the FSI conducted sampling into these areas, the description of the sampling methodology is inadequate. Sample depths and characterization of the backfill area are not provided. The analytical results for the backfill samples are neither discussed nor included in the soil PCE isopleth maps despite SS-1 exhibiting the second highest soil concentration (4.4 mg/kg) of PCE for the site. This elevated concentration may be indicative of the backfill behaving as a preferred pathway, but further investigation is needed.

Horizontal delineation of PCE soil contamination is incomplete according to Figure 6. The most southeastern soil boring (AB-3) exhibits a PCE concentration (0.094 mg/kg) above the RISC RDCL of 0.058 mg/kg. Thus delineation to below the RDCL is incomplete. At least one soil boring to the southeast of AB-3 is needed to complete the delineation.

Horizontal delineation of PCE groundwater contamination is incomplete according to Figure 7. The most southwestern monitoring well (MW-9) exhibits a PCE concentration (73 µg/l) above the RISC IDCL. The drawn isopleth indicates PCE to be delineated to below the RDCL to the southwest. However, no further monitoring wells are located downgradient to the southwest. Similarly, the northeastern and eastern wells MW-5 and MW-17 exhibit PCE concentrations (6.6 µg/l and 87 µg/l) above the RDCL and IDCL, respectively. Plume delineation is indicated to the RDCL, although no further monitoring wells are located beyond the wells to the northeast and east. While the locations are upgradient, the presence of the contaminant (PCE) indicates migration in these directions. This may be the result of variation in the groundwater flow direction, or be indicative of preferential pathway flow. At least five shallow groundwater monitoring wells are needed to complete the delineation of the PCE groundwater contaminant plume in the northeast, east, and southwest directions.

The ISC detected 76,000 µg/l of PCE in the groundwater at the centrally located MW-3. The IDEM Geological Services memorandum dated September 14, 2005 raised concern for the presence of a dense non-aqueous phase liquid (DNAPL) based upon a dissolved concentration (76,000 µg/l) greater than 1% of the solubility. This concern remains as the concentration increased at MW-3 in the FSI to 130,000 µg/l. The location of monitoring wells MW-15, MW-16, MW-17, and MW-18 were proposed to IDEM by AEE in response to the DNAPL concern,

and IDEM approved their location. However, the IDEM recommendation suggested "Monitoring wells need to be installed to the depth of bedrock or the bottom limiting layer of the aquifer." The installation of the wells to a depth of 20 feet does not adequately address this suggestion. Thus, additional monitoring wells into the primary aquifer remain necessary to evaluate the possible DNAPL presence and downward migration. A minimum of three wells is necessary to evaluate groundwater flow and contaminant migration in the primary aquifer. Furthermore, the development of fence diagrams or three dimensional modeling could prove to be useful in establishing the location of DNAPL pools and/or migration pathways.

## **SPECIFIC COMMENTS**

Page 4 – Section 2.2 - Paragraph 1 – "Additionally, four (4) samples were obtained from potential preferential pathways in the backfill..." The methodology for the collection of these samples needs to be described in detail. Sample names are not denoted in the report. Clarification is needed.

Page 6 – Section 2.5 – Paragraph 2 – "The groundwater elevation for MW-9 was anomalously high and could be related to a leak in the immediately adjacent water line." Previous sampling events did not exhibit the anomaly. Verification of the leaking water line is needed to justify the statement.

Page 6 – Section 2.6, and Table 5 – The four samples collected as a means of evaluating sewer and waterline backfill as preferential pathways are not discussed. The IDEM response to the initial site characterization (ISC) specifically called for this evaluation of preferential pathways to the north of the property. This discussion is needed.

Page 7 – Paragraph 1 – "...underlying the former site building and in the former UST cavity to the northeast." This statement is incorrect. The former UST cavity is to the northwest.

Page 7 – Paragraph 1 , and Figure 6– "As the map clearly shows, the highest PCE concentrations ..." The PCE isopleths map shown in Figure 6 fails to incorporate analyses of soil samples from the sewer and waterline backfill locations. Sample SS-1 exhibited the second greatest PCE concentration (4.4 mg/kg) measured at the site, which is significantly above the RISC IDCL. All analytical data needs to be incorporated into the delineation of contamination.

Page 8 – Paragraph 3 – "the presence of the former UST cavity so close to the former building may be a significant factor in the extension of the plume to the northwest." The UST cavity alone does not sufficiently explain groundwater contamination further upgradient. Further examination of preferred pathways for upgradient migration is necessary.

Page 8 – Paragraph 4 – Analytical results for groundwater TCE contamination are presented, but no figure delineating TCE contamination at the site is provided. TCE plume delineation is needed.

Page 9 – Paragraph 3 , and Table 6– “The duplicate sample, DUP-1, was obtained from MW-17.” Table 6 identifies two samples as “Dup-1.” Clarification is needed.

Page 10 – Paragraph 3 – “While fluorescence was detected in several samples...indicating the presence of spent solvent adhering to soil particles...” Use of the term “spent solvent” is a misleading representation of the nature of the contamination. The term “contaminant” should be utilized instead.

Page 10 – Paragraph 4 – “This variation is fairly typical of a perched groundwater table of limited areal extent such the one observed at the site.” The ISC does not characterize groundwater at the site as a “perched groundwater table.” Further explanation of how the “perched groundwater” results in one order of magnitude changes in contaminant concentration is needed.

Figure 6 – The delineation of PCE soil contamination below the RDCL is incomplete to the southeast of AB-3. Further horizontal soil delineation is needed.

Figure 7 – Although the isopleth map indicates complete delineation, delineation of groundwater PCE contamination is incomplete southwest of MW-9. PCE concentration at MW-9 (73 µg/l) is above the RISC IDCL, and no further monitoring wells exist downgradient to the southwest. Similarly, MW-5 and MW-17 in the northeast and east exhibit PCE concentrations (6.6 µg/l and 87 µg/l) above the RDCL and IDCL with no further monitoring wells beyond. Further delineation of the shallow groundwater is needed in these areas.

## CONCLUSION

Further site investigation is necessary to complete several components of contaminant delineation for the site. Vertical soil delineation is incomplete. The AEE proposal of deeper (30 ft) soil borings to complete the delineation is acceptable to address this issue.

Horizontal delineation of PCE soil contamination is incomplete to the southeast. At least one additional soil boring in this direction is needed.

The examination of the utility line backfill as a preferential pathway is incomplete. Clarification of the sampling methodology is needed to evaluate the analytical results.

Horizontal delineation of PCE contamination in shallow groundwater is incomplete. A complete perimeter of monitoring wells is needed to delineate to the RDCL, and to address the variable nature of groundwater flow at the site. At least two wells are needed to the south and southwest of MW-9. At least two wells are needed to the east and northeast of MW-17. At least one well is needed to the northeast of MW-5.

The high concentration of PCE (130,000 µg/l) in MW-3 strongly indicates the presence of a DNAPL. Further investigation into the underlying primary aquifer is necessary. A minimum of three wells advanced to the depth of bedrock or the bottom limiting layer of the aquifer are necessary to characterize the flow of groundwater and the presence of DNAPL contaminant.

**Internal Deliberative Communication: Not for Public View**

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

INDIANAPOLIS

**OFFICE MEMORANDUM**

Date: July 25, 2007

To: Nilia Moberly Green  
State Cleanup Section

Thru: Barry Steward  
Fran Metcalfe

From: Namrata Patel  
OLQ Chemistry Section

Subject: Further Site Investigation (FSI) Report for  
Crawfordsville Square II LLC (Former Boulevard Cleaners)  
Crawfordsville, Montgomery County, IN  
Site # 2005-06-216

RECEIVED  
JUL 26 2007  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

The FSI Report dated July 3, 2007 and prepared by Astbury Environmental Engineering, Inc. (AEE) has been evaluated. The Report was evaluated against the Risk Integrated System of Closure (RISC) Technical Resource Guidance Document and the quality control criteria found in the Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods (SW846) Third Edition, Update III. After evaluating the document, it was determined that additional vertical soil delineation is necessary as recommended in comment # 3. Specific comments regarding this document appear below.

**Site History**

This document is a further site investigation in response to the IDEM's comments about installation of additional soil borings and monitoring wells to investigate the potential for dense non-aqueous phase liquid (DNAPL) at the Crawfordsville Square II LLC Former Boulevard site in Crawfordsville, Indiana.

To further delineate the extent of soil and groundwater contamination, seven soil borings (AB-23 to AB-29) and four monitoring wells (MW-15 to MW-18) were advanced on-site in May 2007. A total of eleven soil samples from soil borings (AB-23 to AB-29) at depths ranging from 6-20 feet and four soil samples (SS-1 to SS-4) from sanitary sewer and water lines were collected and analyzed for VOCs utilizing SW-846 Method 8260B. On May 24 and May 30, 2007, groundwater samples from monitoring wells (MW-1 to MW-18 and MW-7D) were collected and analyzed for VOCs utilizing SW-846 Method 8260B. Chemistry previously requested soil and groundwater be investigated by the former UST tank to assure lead contamination does not exist. To address this issue, the consultant collected two soil samples from soil borings (AB-23 and AB-26), located near the UST tanks, and analyzed for Total Lead utilizing SW-846 Method 6010B. A grab water sample from soil boring AB-23 was collected and analyzed for Total Lead and Dissolved Lead utilizing SW-846 Method 7421 and Benzene, Toluene, Ethylbenzene, Xylene and Methyl-Tertiary-Ethyl-Butyl (BTEX/MTBE) utilizing SW-846 Method 8021B. Chemistry also requested the potential vapor intrusion

be evaluated at sites where significant levels of contaminants in soil and/or groundwater are within a distance of 100 feet of homes or inhabited buildings. To address this concern, the consultants collected a crawl space sample from the Carpenter's Barber Shop and analyzed for VOCs utilizing Method TO-15. Based on the groundwater measurement, groundwater is reported to be flowing south/southwest of the site.

Detailed information regarding the site may be found in the Crawfordsville Square II LLC (Former Boulevard Cleaners) file.

**Comments:**

1. Throughout the document, the consultant compares soil and groundwater analytical results with RISC Industrial Default Closure Levels. However, based on RISC guidelines, nature and extent of contamination must be delineated to RISC Residential Default Closure Levels (RDCLs). Therefore, the results for soil and groundwater were compared with residential closure levels and found to demonstrate that the horizontal extent of soil contamination and extent of groundwater contamination was delineated.
2. To address the concern of Lead contamination, two soil samples from soil borings (AB-23 and AB-26) were analyzed for Total Lead. The laboratory analytical results indicated the detected levels of Lead were far below the RISC RDCL of 81 ppm. The extent of Lead contamination has been delineated.
3. On May 16-17, 2007, eleven soil samples from soil borings (AB-23 to AB-29) were analyzed for VOCs. The laboratory analytical results indicated levels of Trichloroethene (TCE) exceeded the RISC RDCL of 0.057 ppm for soil boring AB-23 @ 18-20 and AB-26 @ 18-20. The highest level of TCE was detected in AB-23 @ 0.720 ppm. The laboratory analytical results confirmed the levels of Tetrachloroethene (PCE) exceeded the RISC RDCL of 0.058 ppm for soil borings AB-23, AB-24, AB-25, AB-26 and AB-29. The highest level of PCE (7.2 ppm) was detected in AB-23 @ 18-20 feet. Based on the soil analytical results, the horizontal extent of soil contamination in all principal directions seems to have been delineated. However, based on the PCE results, it appears the vertical extent of soil contamination has not been delineated for soil borings AB-23, AB-24 and AB-29. The consultant proposes to collect deeper soil samples from soil borings AB-23, AB-24 and AB-29 to determine the maximum depth of impacts above the RISC RDCL. This seems adequate.
4. On May 17, 2007, four soil samples (SS-1 to SS-4) from sanitary sewer and water lines were also collected and analyzed for VOCs. The laboratory soil analytical results indicated only PCE in soil sample SS-1 @ 4.4 ppm exceeded the RISC RDCL of 0.058 ppm. All other detected levels of PCE were below the RISC RDCL. Besides PCE, no other VOCs were detected in these samples.
5. On May 17, 2007, a grab water sample was collected from (AB-23) and analyzed for Total Lead, Dissolved Lead, and BTEX/MTBE. The laboratory analytical results indicated levels of Total Lead, Benzene, Ethylbenzene, and Xylene exceeded their respective RISC RDCLs. Dissolved Lead was non-detect in the samples. Therefore, Chemistry recommends for the next round of sampling event, groundwater samples from all monitoring wells be collected for the analyses of Total Lead to assure contamination does not exist or has migrated.
6. On May 24 and 30, 2007, groundwater samples from monitoring wells (MW-1 to MW-18 and MW-7D) were collected and analyzed for VOCs. Groundwater analytical results indicated concentrations of

PCE for monitoring wells MW-1, MW-3, MW-4, MW-5, MW-9, and MW-15 to MW-18 exceeded the RDCL of 5 ppb. The highest level of PCE (130,000 ppb) was detected in MW-3. The levels of TCE for wells MW-3, MW-4, MW-15, MW-16 and MW-17 exceeded the RDCL of 5 ppb. The highest level of TCE was detected in MW-16 @ 350 ppb. The level of cis-1,2-Dichloroethene (170 ppb) for monitoring well MW-16 exceeded the RDCL of 70 ppb. Based on the results, it appears the extent of groundwater contamination has been delineated. Elevated levels of PCE and TCE above the RDCL and Industrial Default Closure Levels (IDCL) remain at the site. The consultant concludes that the extent groundwater contamination has been delineated and recommends performing a multi-phase extraction (MPE) to remediate the PCE and its breakdown product contamination. Chemistry concurs with their conclusion and recommends a discussion of the remedial approach be proposed and submitted for evaluation.

7. The concentration (130,000ppb) of PCE @ MW-3 exceeds the solubility of PCE indicating that free product is present. To address the issue, all soil samples from soil borings (AB-23 to AB-29) were screened for headspace vapors using a photoionization device (PID) and placed under a fluorescent lamp to determine if free product was present. Fluorescence was detected in samples AB-23, AB-26 and AB-27 at depths ranging from 6-16 feet bgs indicating the presence of solvent adhering to soil particles. However, during the gauging event on May 24, 2007, free product was not observed in the wells. Therefore, it is possible that free product was not observed in the wells because the free product is adhering to the soil.
8. Chemistry stated in the previous memo, due to elevated levels of soil and groundwater contamination, the potential for vapor intrusion exists. Sub-slab or soil gas samples should be collected to demonstrate that vapors are not a problem. To address the issue, a crawl space sample from the Carpenter's Barber Shop was collected and analyzed for VOCs. The laboratory analytical results indicated VOCs were non-detect in the sample. However, the detection limits for Trichloroethene and cis-1,2-Dichloroethene did not meet the 5 year Residential Screening Levels. It is recommended a crawl space sample be analyzed using Method TO-15 Selective Ion Monitoring (SIM).
9. The Level IV QA/QC documentation was provided in a CD attached with the document. The provided Level IV QA/QC documentation was validated and is adequate in confirming the soil and groundwater sample results.

### **Conclusion**

Based on the soil analytical results, the horizontal extent of soil contamination in all principal directions seems to have been delineated. However, based on the PCE results it appears the vertical extent of soil contamination has not been delineated for soil borings AB-23, AB-24, and AB-29. The consultant acknowledges and recommends additional vertical soil delineation is necessary at these locations. Soil and groundwater contamination, at levels significantly exceeding the residential closure levels for PCE and its breakdown products, has been identified at the site. The consultant concludes that extent groundwater contamination has been delineated and recommends performing a multi-phase extraction (MPE) to remediate the PCE and its breakdown product contamination. Chemistry concurs with their conclusion and recommends a discussion of the remedial approach be proposed. The proposed remedial approach (MPE) should be discussed and submitted for evaluation.

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT****INDIANAPOLIS****OFFICE MEMORANDUM**

DATE: January 6, 2006

TO: Anne DaVega  
State CleanupTHRU: Larry Studebaker *ZWL 1/9/06*FROM: Kevin Houppert *KLH 1-6-06*  
Geological ServicesSUBJECT: Response to FSI Request  
Boulevard Cleaners  
Crawfordsville, Indiana, Montgomery County  
Incident #0506216

Per your request, I have evaluated and interpreted the above document, prepared by Astbury Environmental, Inc. (Astbury) in November 2005. I have the following comments:

**SITE REVIEW**

The full site history can be found in the memorandum evaluating the initial site characterization (from K. Houppert to A. DaVega, September 14, 2005). Astbury conducted the initial site characterization and has responded to the IDEM comments. Astbury has also proposed additional investigation in response to the IDEM comments.

**COMMENTS**

The responses to comments are adequate and complete. The tone of the Astbury responses is initially combative, but concludes with acknowledgement of the IDEM concern and agreement to resolve or address the concerns.

In general, the IDEM comments required clarifications of inconsistencies, corrections of omissions, and further investigation of the extent of contamination in the soil and ground water. Astbury agreed to locate and investigate the backfill of the former sanitary sewer line as a potential preferred migration pathway. The depth to ground water and the flow direction will be clarified as data are collected over time. There will be additional borings and monitoring well installations to investigate the potential for dense non-aqueous phase liquid (DNAPL).

Astbury proposed to add parameters to investigate the presence of lead from a presumed leaded gasoline UST. Astbury proposed the installation of 7 borings with 4 of these converted to monitoring wells. Astbury also agreed to investigate the neighboring barber shop for the potential of vapor intrusion to the indoor air.

## CONCLUSIONS

The responses to comments are adequate and complete. The IDEM evaluation of the ISC included 11 enumerated comments. One of these was a concern from the site chemist regarding a quality control issue. The remaining 10 concerns were adequately addressed by the Astbury responses. The proposed actions are recommended for acceptance and implementation.

The interpretations and evaluations of geologic data, which were used to form the conclusions presented in this document, have been certified as being created by or under the direction of an Indiana Licensed Professional Geologist (LPG), as required by Indiana Code IC 25-17-6 and defined in Title 305 IAC.

cc: Namrata Patel, OLQ Chemistry Section

BlvdCleanersResp-0506216-geo-010606

## DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

**CONFIDENTIAL  
AND  
\*DELIBERATIVE\***

**This document does not represent  
final agency opinion**

### OFFICE MEMORANDUM

Date: December 21, 2005

To: Anne DeVega  
State Cleanup Section

Thru: Fran Metcalfe  
Barry Steward

From: Namrata Patel *NP 12/21/05*  
OLQ Chemistry Section

Subject: Response to Further Site Investigation (FSI) Request for  
Crawfordsville II LLC/ Former Dry Cleaners  
Crawfordsville, Montgomery County, Indiana  
Site # 2005-06-216

The Response to FSI Request Report, dated November 25, 2005 has been evaluated. The Report was evaluated against the methods and procedures described in the Risk Integrated System of Closure (RISC) Guidance Document, and the quality control criteria found in the Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods (SW846) Third Edition, Update III. It was determined that Chemistry comments were adequately addressed except for QA/QC documentation. It is recommended that the additional comment be taken into account. Specific comments regarding this document appear below.

#### Site History

See Chemistry's memo dated September 19, 2005 for a detailed site history.

#### Comments

1. Comment 3- This comments concerned blocked sanitary sewer lines that should be considered preferential pathway. To address this issue, the consultant will investigate to determine the location of the blocked sanitary sewer line and obtain a minimum of two soil sample from its backfill for VOCs analysis. This seems acceptable.
2. Comments 5, 6 & 7- These comments concerned additional soil and groundwater investigations be performed to define the vertical extent of contamination and the level of PCE reported from MW-3 (76,000 ppb) presumes that dense non [-] aqueous phase liquids (DNAPLs) is present. To address these comments, the consultant proposes to advance seven soil borings, four of which will be completed into monitoring wells to further delineate the vertical extent of VOCs and to assess the possible presence of DNAPLs. To evaluate the presence of DNAPLs, the consultant will use ultraviolet (UV) light on soil samples to look for fluorescence. This seems acceptable. Soil and groundwater samples for VOCs will be collected and analyzed from the proposed soil borings. Proposed soil borings and monitoring wells locations seems appropriate; however, the locations of soil borings and monitoring wells should be discussed with the site Geologist.
3. Comments 8 & 9- These comments concerned whether or not soil samples from soil borings AB-13, AB-14 and AB-16 and groundwater samples from monitoring wells MW-6, MW-7 and MW-8 were

collected. However, laboratory analytical results for these could not be located. The consultant in Appendix B has provided the laboratory results for these samples. The results confirmed levels of VOCs in soil and groundwater were all non-detect.

4. Comment 10- This comment concerns soil and groundwater samples be collected and analyzed to assure lead contamination does not exist. To address this concern, the consultant proposes to collect two soil samples (one from new soil boring adjacent to AB-7 and the other one from a new boring on the west side of the former dry cleaner building for the analyses of Lead utilizing SW-846 Method 6010B and two groundwater samples will also be collected and analyzed for unfiltered and filtered Lead utilizing SW-846 Method 7421. This seems appropriate.
5. Comment 11- This comment concerns QA/QC documentation. IDEM in this comment requested full QA/QC documentation be provided. The consultant argues trip blank (TB), equipment blank (EB), and duplicate (DUP) along with surrogate recoveries and chain-of-custodies (COCs) were provided for the collected soil and groundwater samples. Chemistry agrees that the trip blank, equipment blank and duplicates were collected with soil and groundwater samples; however, when defining the extent of soil and groundwater contamination, full QA/QC documentation (site specific matrix spike/ matrix spike duplicate, initial calibration, continuing calibrations, internal standards, and all raw data for the collected samples) along with TB, EB, DUP, surrogate recoveries, and COCs must be provided, as outlined in RISC Technical Guide, Appendix 2. The consultant agrees to collect TB, EB, Dup, MS/MSD; however, the consultant has not proposed to provide additional QA/QC documentation as noted above in this comment. Therefore, further investigations must include full QA/QC documentation. A detailed requirement for full QA/QC documentation can be found at: [http://www.IN.gov.idem/land/risc/tech\\_guide/risc\\_app2.pdf](http://www.IN.gov.idem/land/risc/tech_guide/risc_app2.pdf).
6. IDEM's Conclusion- The conclusion concerned the potential vapor intrusion be evaluated at sites where significant levels of contaminants in soil and/or groundwater are within a distance of 100 feet of homes or inhabited buildings. To address this concern, the consultant has agreed to collect a crawl space sample and analyze the sample using Method TO-14. The consultant proposes to use a 6 liter SUMMA canister over 8 hour period. The use of TO-14 is acceptable as long as IDEM action levels can be met, otherwise Method TO-15 will be necessary.

### **Conclusion**

In general the chemistry comments were adequately addressed. However, the above comment regarding QA/QC documentation and crawl space sampling must be addressed.

cc: Kevin Houppert, Site Geologist

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

INDIANAPOLIS

**OFFICE MEMORANDUM**

Date: September 19, 2005

To: Anne DaVega  
State Cleanup Section

Thru: Fran Metcalfe *for 9-19-05*  
Barry Steward *for 9-19-05*

From: Namrata Patel *NP 9/19/05*  
OLQ Chemistry Section

Subject: Initial Site Characterization (ISC) Report for  
Crawfordsville II LLC (Former Boulevard Cleaners)  
Crawfordsville, Montgomery County, IN  
Site # 2005-06-216

The ISC Report prepared by Astbury Environmental Engineering, Inc. (AEE) has been evaluated. The Report was evaluated against the Risk Integrated System of Closure (RISC) Technical Resource Guidance Document and the quality control criteria found in the Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW846) Third Edition, Update III. After evaluating the document, it was determined that the soil and groundwater contamination above residential cleanup goals remain at the site. Specific comments regarding this document appear below.

**Site History**

The Crawfordsville II LLC Former Boulevard Cleaners site is located at 203 East South Boulevard in Crawfordsville, Indiana in a residential/commercial area. The site was most recently used as a dry cleaner and ceased operations in August 1999. Prior to operation as a dry cleaning facility, the site operated as a gasoline distribution facility. The properties are bounded on north by residential and school, west by Carpenter's Barber Shop, Advance Auto Shop and Papa Johns Pizza, east by a vacant lot and to the south by Crawfordsville Mall. Two unregistered USTs (10,000 gallon each) were closed in-place in the early 1980s and removed in 2000. The site is currently vacant and all previously existing structures have been razed.

Several investigations were performed at the site by American Environmental Abatement Co., Inc. (AEAC). In November 2000, two USTs presumed contained gasoline were removed. Approximately 820 tons of soil were excavated and removed from the site. Also, 6,820 gallons of impacted excavation water was removed and disposed. Eleven soil closure samples (S-1 to S-7 and B-1 to B-4) were collected and analyzed for TPH-GRO and TPH-DRO. Groundwater sample was not collected. Levels of TPH-DRO were all below the detection limits. The soil analytical results indicated the concentrations of TPH-GRO were all below detection limits except for soil sample B-1. Level of TPH-GRO in sample B-1 @ 1.2 ppm was below the IDEM Cleanup Criteria of 100 ppm. In June 2001, a limited subsurface investigation was performed by AEAC at the site. Seven soil probes (P-1 to P-7) were advance at the site. Seven soil

samples at depths ranging from 8-10 feet and one groundwater sample (P-3) were collected and analyzed for VOCs. The soil analytical results indicated levels of Tetrachloroethene (PCE) was detected in all collected sample, except for (P-6). The highest level of PCE was detected in soil sample P-3 @ 32,000 ppb. Groundwater sample (P-3) results indicated levels of PCE (42,000 ppb) and levels of TCE (77 ppb) exceeded the residential closure levels.

To further delineate extent of soil and groundwater contamination, twenty-two soil borings (AB-1 to AB-22) and fourteen monitoring wells were advanced on-site and off-site in June and July of 2005. A total of thirty-one soil samples from soil borings (AB-1 to AB-12 and AB-17 to AB-20) at depths ranging from 4-12 feet were collected and analyzed for VOCs utilizing SW-846 Method 8260B. Fourteen monitoring wells (MW-1 to MW-14) were advanced as well. Groundwater samples from monitoring wells (MW-1 to MW-5 and MW-9 to MW-14) and soil boring (AB-7) were also collected and analyzed for VOCs utilizing SW-846 Method 8260B. Based on the groundwater measurement, groundwater is reported to be flowing south/ southwest of the site.

Detailed information regarding the site may be found in the Crawfordsville II LLC Former Boulevard Cleaners file.

Comments:

1. Throughout the document, the consultant compares soil and groundwater analytical results with RISC Industrial Default Closure Levels. However, based on RISC guidelines, nature and extent of contamination must be delineated to RISC Residential Default Closure Levels (RDCLs). Therefore, the results for soil and groundwater were compared with residential closure levels and found to demonstrate that the extent of contamination was defined. dk

- 6/6  
AB1-AB12  
7/6  
AB-17  
AB-18  
AB-19  
AB-20
2. On June 6, 2005 and July 6, 2005, thirty-one soil samples from soil borings (AB-1 to AB-12 and AB-17 to AB-20) at depths ranging from 4-12 feet were collected and analyzed for VOCs. The laboratory analytical results confirmed the levels of Tetrachloroethene (PCE) exceeded the RISC RDCL of 57 ppb for soil borings AB-5 and AB-11. The highest level of PCE (700,000 ppb) was detected in B-5 @ 8-10 feet. The summary table 11 indicated soil samples from soil borings (AB-13, AB-14, and AB-16) were collected and analyzed for VOCs. Based on the summary results, VOCs were all non-detect for soil borings (AB-13, AB-14, and AB-16). However, analytical data supporting these results were not provided. Based on the soil analytical results, the extent of soil contamination in all principal directions seems to have been delineated. Supporting laboratory data for soil samples (AB-13, AB-14, and AB-16) must be provided before approving site characterization for soil. Soil samples from soil borings AB-21 and AB-22 were not collected for the analyses of VOCs. This is probably not necessary, since the levels of PCE east (AB-17 and AB-18) of soil borings (AB-21 and AB-22) were below the detection limits. ✓

- 6/13  
MW-1  
-2  
-3  
-4  
-5
3. Groundwater samples from monitoring wells (MW-1 to MW-5 and MW-9 to MW-14) were collected on June 13, 2005, July 8, 2005, and July 22, 2005, respectively, and analyzed for VOCs. Groundwater analytical results indicated concentrations of PCE for monitoring wells MW-1 to MW-5 exceeded the RDCL of 5 ppb. The highest level of PCE (69,000 ppb) was detected in MW3. Levels of TCE (5.1 ppb) in MW-1 and Vinyl Chloride (25 ppb) in MW-10 exceeded their respective RDCLs. The summary table 13 indicted groundwater samples from monitoring wells (MW6, MW-7, MW-7D, and MW-8) were collected and analyzed for VOCs. Based on the summary results, VOCs were all non- ✓

7/8 MW-11  
MW-12  
MW-10  
-9

7/22 MW-14  
MW-13

detect for monitoring wells (MW-6, MW-7, MW-7D, and MW-8). However, analytical data supporting these results are not provided. Based on the groundwater analytical results, the extent of groundwater contamination in all principal direction seems to have been delineated; however, the site Geologist must be consulted. Supporting laboratory data for groundwater samples (MW-6, MW-7, MW-7D, and MW-8) must be provided before approving site characterization for groundwater. ✓

4. The concentration (69,000 ppb) of PCE @ MW-3 exceeds the solubility of PCE indicating that free product is present. The free product must be addressed. sk
5. Due to elevated levels of soil and groundwater contamination, the potential for vapor intrusion exists. Sub-slab or soil gas samples should be collected to demonstrate that vapors are not a problem. A
6. The consultant concludes that extent of soil and groundwater contamination has been delineated and recommends performing a pilot test for multi-phase extraction (MPE) to remediate the PCE and its breakdown product contamination. Chemistry concurs with their conclusion and recommends a discussion of the remedial approach be proposed. SL
7. The age of the previous usage of retail gasoline facility is unknown. Since Leaded gasoline was still being used in the late 1970's, the potential for Leaded gasoline being a contaminant exists. Justification and supporting documentation must be provided to illustrate that Leaded gasoline is not an issue at this site. Otherwise, soil and groundwater samples must be collected and analyzed to assure Lead contamination does not exist. ✓
8. Except for the chain-of-custodies and surrogate recoveries, no other quality assurance/ quality control (QA/ QC) documentation were provided for soil and groundwater samples collected in June and July 2005. When defining extent of soil and groundwater contamination, full QA/QC documentation is required. Full QA/QC documentation must be provided before site characterization is approved. The documentation requirements for analytical data, including field QA/QC measures and laboratory QA/QC results, can be found on the IDEM web site at:  
[http://www.IN.gov/idem/land/risc/tech\\_guide/risc\\_app2.pdf](http://www.IN.gov/idem/land/risc/tech_guide/risc_app2.pdf). ✓

### Conclusion

Soil and groundwater contamination, at levels significantly exceeding the residential closure levels for PCE and its breakdown products, has been identified at the site. Proposed remedial approach (a pilot test for MPE) should be discussed and submitted for evaluation.

cc: Kevin Houppert, Site Geologist

## DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

## INDIANAPOLIS

OFFICE MEMORANDUM

DATE: September 14, 2005

TO: Anne DaVega  
State CleanupTHRU: Larry Studebaker *ZWP 7/15/05*FROM: Kevin Houppert *KLH 7-14-05*  
Geological Services**CONFIDENTIAL****AND****\*DELIBERATIVE\*****This document does not represent  
final agency opinion**SUBJECT: Initial Site Characterization Report  
Boulevard Cleaners  
Crawfordsville, Indiana, Montgomery County  
Incident #0506216

Per your request, I have evaluated and interpreted the above document, prepared by Astbury Environmental, Inc. (Astbury) in August 2005. I have the following comments:

**SITE REVIEW**

The site is located on the south side of South Boulevard Street, east of the intersection with Durham Street. There are no buildings or structures on the site. The land use is a mix of commercial and residential. The south side of South Boulevard Street is commercial with individual stores and a large shopping mall, and there is a residence on the north side of the street. The topographic map shows the Hoover School is located about one block north of the site.

The site history includes operation of a gasoline distribution facility by Tri-County Petroleum "through at least the mid to late 1970's." Two unregistered 10,000 gallon USTs were closed in place in the early 1980's and removed in 2000. The period of operation as a gasoline station and car wash precedes the use of MTBE as a gasoline additive.

*pg 1/3* Full details of the dry cleaning business history are not provided. The information provided by Astbury is inconsistent, stating that the "operations ceased in August 1999 after approximately 5 to 10 years," and that the dry cleaning system was removed "sometime after its closure in 1990." *ok 1999*

Due to the history of the site as a gasoline station and dry cleaner, the contaminants of concern include BTEX and chlorinated hydrocarbons. The chlorinated hydrocarbons include perchloroethylene (PCE), and the associated daughter products of trichloroethylene (TCE), dichloroethylene (DCE), and vinyl chloride.

Previous reports for the site are included in Appendix C. These include a UST Closure Report and two Limited Subsurface Investigations, all performed by American Environmental

The site geology is described as unconsolidated glacial deposits of up to 150 feet in thickness. The surface soils are "udorthents," indicating altered or disturbed loamy soil that may include cut and fill materials. The underlying bedrock is the Borden Group of sandstone, siltstone, and shale. The depth to ground water is 9-14 feet and was encountered in thin discontinuous sand lenses, which range from 10-20 feet below the surface. Twelve on-site borings and seven off-site borings were advanced in June and July 2005. Fourteen borings were converted into monitoring wells and the ground water was sampled for VOCs, including BTEX compounds. Astbury has concluded that the ground water contamination has been delineated.

A water well survey was made from IDNR water well records. Within a 1.0 mile radius, 22 low capacity wells were found, and within a 2.0 mile radius, 24 high capacity wells were found.

## GENERAL COMMENTS

✓ The report is inadequate and incomplete. The report has inconsistent and contradicting statements regarding the depth to ground water and the ground water flow direction. The delineation of the vertical extent of the PCE contamination is incomplete.

## SPECIFIC COMMENTS

The reports reproduced in Appendix C contained illustrations that were rendered illegible by the photocopying process.

✓ In the introduction (page 1, paragraph 5), the depth to ground water is described as 9-14 feet. However, on page 9, in paragraph 3, the depth to ground water is reported as 6.19 to 7.26 feet. On Table 8, Well Data & Ground Water Elevations, the depth to ground water ranged from 4.37 to 8.00 feet. The depth to ground water needs to be clarified.

✓ The ground water flow direction is reported on page 6, in paragraph 2, as "to the west or southwest." However, on page 9, in paragraph 4, it is reported as "primarily to the south with components to the southwest and southeast from MW-3." Then, on page 9, in paragraph 5, three ground water gradients were calculated, flowing to the south once and the west twice. Although it was not stated by Astbury, the sum of the ground water flow directions indicates a radial flow pattern to the south with western and southeastern components. Understanding the ground water flow direction should lead to an understanding of the contaminant transport and migration. In this report, the ground water flow direction is inconsistent and the ground water contaminant distribution is not well defined.

✓ Page 8, paragraph 6: Astbury states that there are no characteristics that would cause preferred contaminant pathways through the soil because none of the soil contamination appears to be near the surface and "the only piping trenches running through the Site may be the blocked sanitary sewer line." The backfill around the sanitary sewer line is a preferential pathway, even if the pipe has been blocked. The sanitary sewer was not found on any of the illustrations. The

blocked sanitary sewer needs to be illustrated and also needs to be considered as a preferential pathway.

Figure 10, VOCs Detected In Ground Water Map: The illustration shows chlorocarbons radially distributed in all directions from the building. There are relatively higher concentrations to the southwest with 11,000 ppb of PCE in MW-1, and another relatively high concentration of 980 ppb PCE and 5.1 ppb of TCE at MW-4, at the northwest corner of the property. None of Astbury's ground water flow interpretations included a northwesterly component of flow. There is a sanitary sewer line located off-site in the street intersection at the northwest corner of the property. It is likely that the blocked sanitary sewer from the building connects at the northwest corner of the property. The backfill of the sewer trench is a likely preferred pathway for contaminant transport and needs to be investigated.

Table 11, Soil Analytical Results: There are four borings (AB-5, AB-7, AB-9, and AB-11) with detections of PCE reported from the lowest sampled interval. The deepest samples from these four borings yielded laboratory results of PCE concentrations in excess of the RISC residential levels for PCE, and all but AB-7 exceeded the RISC industrial levels for PCE. The full vertical extent of soil contamination is not defined. It is necessary to sample the soil below the depths of these samples to determine the full vertical extent of contamination. Field screening with a PID (photoionization detector) indicated no further contamination to the soil, but field screening is not a substitute for laboratory analysis.

Not  
AB-9  
AB-11

The gasoline hydrocarbon impact to soil is likely to be limited to the vadose zone. Below the water table, it becomes a ground water problem. However, the chlorocarbon impact may not be limited to the vadose zone. Chlorinated solvents are less viscous and heavier than water and migrate more easily through soil. The identified water bearing zones are described as thin, discontinuous sand lenses in the glacial deposits. Due to the high concentration of PCE at MW-3, the investigation of the vertical extent of contamination needs to continue to determine whether or not chlorocarbons have migrated below the sand lenses.

The ground water contaminant level of PCE reported from MW-3 was 76,000 ppb. This concentration is enough to presume that dense nonaqueous phase liquid (DNAPL) is present. In assessing the potential for DNAPL, Geological Services staff refers to the literature reference of Pankow and Cherry (1995, Dense Chlorinated Solvents and other DNAPLs in Groundwater, p. 222), who state that "As a 'rule-of-thumb,' the finding of dissolved concentrations that **exceed 1% of the effective solubility** should probably be cause for serious consideration of the presence of a DNAPL phase in the subsurface." The general statement for DNAPL presence is indicated by 1% of solubility at 15 C, or 59 F. For PCE, the 1% solubility is 2,384 ppb. The 76,000 ppb PCE concentration in MW-3 was approximately 32% of the solubility. Considering the non-ideal monitoring well placement and the exceedance of the 1% solubility, the site needs to be investigated for DNAPL in the vicinity of MW-3. Monitoring wells need to be installed to the depth of bedrock or the bottom limiting layer of the aquifer. Additional monitoring wells need to be installed in the area of the former building footprint and consideration needs to be given to the former sanitary sewer line as a preferential pathway for horizontal migration.

## CONCLUSIONS

The investigation is incomplete. The depth to ground water is inconsistent and needs to be clarified. The ground water flow direction has not been adequately determined. The vertical depth of contamination in the soil is not fully delineated. The ground water contamination investigation in the vicinity of the former building is inadequate. Additional investigation is necessary to assess the potential presence of DNAPL.

The sanitary sewer needs to be investigated as a preferential pathway and needs to be illustrated on figures. As discussed previously, the trench backfill material is likely to provide a preferential pathway for contaminant migration.

Astbury has concluded that the extent of contamination has been delineated and proposed a pilot test for remedial action. The proposed remediation system is appropriate for the site conditions and contaminants present, but it is premature to begin the pilot test before the full vertical extent of contamination is known.

The interpretations and evaluations of geologic data, which were used to form the conclusions presented in this document, have been certified as being created by or under the direction of an Indiana Licensed Professional Geologist (LPG), as required by Indiana Code IC 25-17-6 and defined in Title 305 IAC.

BlvdCleaners-0506216-geo-091405